

1909-019 Chancery Causes: Perdie Orr &c vs. Mary Wells &c
Lee Co.

Saffell, Hobbs, Hyatt, Mosley, Hughes, Catron, Duff

CA - Estate Dispute
T - Property

TO the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County:-

Your complainant, Perdie Orr, for herself and as next friend for her brother, Robt. S. Orr, respectfully represents and will show unto your honor as follows to-wit:

1st. That at the First November rules, 1888, Rebecca Orr exhibited her bill in Chancery against your complainant and others and therein set forth that previous thereto, to-wit, on the 7th day of April, 1883, she and her husband David M. Orr, made a conveyance of a certain tract of land situated in Lee County, Virginia, whereby she and her said husband conveyed to Robt. S. Orr, Sr., father of your complainant and her brother, Robt. S. Orr, a tract of land in the said deed mentioned and described upon the terms therein stated. The said bill set forth that the acknowledgement to the said deed was insufficient, and that on account thereof the said deed was void. Your complainant at that time was an infant and a mere child. The said Robt. S. Orr, Sr., father of your complainant, died on the 14th day of August, 1888, and at the first November rules 1888, the said plaintiff, *Rebecca* Orr, in said original bill filed here suit. At the time of the bringing of said suit your complainant's brother was not then born, and was born on the 6th day of February, 1889, following the institution of said suit in November, 1888. So far as your complainant was concerned said bill was answered by a guardian ad litem, who filed a formal answer which simply prayed for the protection of her interest by the court. And upon the issue so made and joined in the said bill and answers, the rights of your petitioner and that of her said brother were affected in a material way by two decrees which are final decrees, and which were entered therein, the first of which was entered in vacation on Sept. 12th, 1889, and is in the following words and figures to-wit:

" Virginia,
Circuit Court of Lee County in Vacation September 12th,
1889.

Rebecca Orr

Vs.

In Chancery.

E. W. Pennington, admr. &c. et al.

This cause came on this day to be heard in vacation pursuant to a consent decree entered herein, upon the bill, answers, exhibits, and decree entered and was argued by counsel.

And the court being of opinion that under the decisions of the Supreme Court of this state that the acknowledgement of said Rebecca Orr of the deed of conveyance to Robt. S. Orr is defective as to said Rebecca Orr and not in accordance with the statute and that no subsequent ratification thereof by said Rebecca Orr can be shown by parole; and the court being further of the opinion that the said R. S. Orr if alive would be entitled to elect, under the circumstances of this case, and as said R. S. Orr is dead and has left minor heirs, it is therefore adjudged ordered and decreed that J. A. G. Hyatt report to this court the cash value of the land conveyed to R.S. Orr and the cash value of one-half when partitioned, the rental value as found by the arbitrators of said land and of one-half thereof, the annual value of the support of David M. Orr and Rebecca Orr and the time they and each of them was supported by said R. S. Orr and those claiming under him the amount and date of any moneys or other things paid, expended or incurred under and by virtue of the contract under which R.S. Orr held the land in controversy, the value of the time, trouble and expense R. S. Orr was at in carrying out said contract for said land and date from which interest should run on each item, the date of the death of David M. Orr and R. S. Orr, the permanent improvements put on said land and value thereof, and time when put there. He will show whether it is to the interest of said heir of R. S. Orr to accept one-half of the estate under said contract or receive the same in toto, and also the amount chargeable upon the moiety of Rebecca Orr by virtue of said contract, he will report any other matter deemed pertinent or which he may be by the parties specially requested to report, he will file the evidence on which he acts. And this cause is continued.

H. S. K. Morrison.

September 12, 1889.

To the clerk of the Circuit Court for Lee County, Va.

The second of said decrees was entered on the 2nd day of April, 1890, and is in the following words and figures to-wit:

Rebecca Orr

Plff.

Against

In Chancery.

E. W. Pennington, admr. &c. et al. Deft's.

This cause came on this day, by consent of parties by their attorneys, to be heard upon the original bill and exhibits therewith, the answers of the defendants to said original bill and general replications thereto, the supplemental bill and answers thereto, and exceptions to the answer of E.W. Pennington, admr. &c. & Lizzie Orr, widow of R. S. Orr, deceased and the court sustains said exceptions as to said new matter and no further answer being filed and general replications to said answers, the depositions of witnesses, the re-

port of Commissioner Hyatt and statements therewith, the exceptions to said report and statements, the agreed state of facts filed with said report and the former decrees entered in the cause and was argued by counsel. And the court being of opinion, that the plaintiff, Rebecca Orr, cannot claim support under the deed made to R. S. Orr by herself and husband, and at the same time claim rents for the land thereby conveyed and the land itself, and also of opinion that there was no contract, or implied contract, with R. S. Orr for pay for her services as housekeeper, under the circumstances of this case.

And the court being further of opinion that the improvements made by R. S. Orr are not of that kind which are properly classed as permanent improvements; and that the plaintiff is entitled to have her moiety of said land, and dower in the other moiety, assigned her by proper metes and bounds, and that she is entitled to the rents of one moiety and one-third of the rents of the other moiety of said land from the time of the institution of this suit, and that Commissioner Hyatt has correctly ascertained the value of the said rents. (It is therefore adjudged ordered and decreed that L. M. Carnical, J. E. Hobbs, and E. V. Litton be and are hereby appointed Commissioners, who, after being duly sworn for the purpose, will go upon the land in controversy and partition the same between the plaintiff and the heirs of R. S. Orr deceased, assigning to the said Rebecca Orr one-half of said land and to Perda Orr and R. S. Orr, heirs of R. S. Orr, deceased, the other half of said land, quantity, quality, and value being considered by them in said partition, and the Commissioners in making said partition will assign the one-half of said land to the heirs of R. S. Orr deceased, adjoining their other lands if the same can be done without material injury to the interests of the said Rebecca Orr. Said Commissioners will then lay off and assign to Rebecca Orr one-third in rental value of the moiety of said land assigned by them in their said partition to the heirs of R. S. Orr deceased, as and for her dower interest, as ~~evidence~~ of D. M. Orr, deceased, in said land, and will report their action to the next term of this court.)

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It is further adjudged, ordered and decreed that the said Rebecca Orr recover of E. W. Pennington, administrator of the estate of R. S. Orr, deceased, out of the estate of the said decedent in the hands of said admr. unadministered the sum of \$233.33 1/3, the amount of the rents of one moiety and one-third of the rents of the other moiety of said land, that have accrued since the institution of this suit and up to January 1st, 1890, with interest thereon from the said 1st day of Jan. 1890 until paid, subject to a credit of \$50.00 paid by said R. S. Orr April 7th, 1883, and \$10.01, one-half the taxes on said land for the year 1889, paid January 1st, 1890. And it is further adjudged ordered and decreed that the exceptions filed to Commissioner Hyatts report and statements therewith, by plaintiff and defendants are annuled, so far as the said report and statements are not in conflict with this decree, and in so far as the said report and statements are in conflict with this decree the said exceptions thereto are sustained & this cause is continued.

Memorandum.

The defendants suggesting that they feel aggrieved by this decree and desire to appeal therefrom, it is ordered that execution be stayed for 90 days, upon the defendants, or either of them, or some one for them, executing bond in the penalty of \$200.00, with good security, before the clerk of this court, conditioned according to law.

The said decrees are erroneous because of the error of law apparent upon the face of the record, which errors are as fol-

lows to-wit:

1st. The said court erred in holding that the certificate attached to the said deed of April 7th, 1883, was not sufficient and your complainant is advised that the same was sufficient and here files with this petition a copy of the said deed and acknowledgement as part hereof, the acknowledgement of which ^{as to the wife} is in the words and figures following to-wit:

" Virginia, Lee County, to-wit:

We John B. Pennington and W. R. Yearly, two Justices of the Peace in and for the County and state aforesaid do certify that Rebecca Orr, wife of David M. Orr, whose names are signed to the foregoing deed bearing date on the 7th day of April, 1883, personally appeared before us in our county, and being examined by us privily and apart from her said husband and having the deed read and fully explained to her, acknowledged that she had willingly executed the same and does not wish to retract it.

Given under our hands this the 20th day of April, 1883.

W. R. Yearly. J.P.

J. B. Pennington. J.P.

Your complainant is advised that the Court erred in holding that the said certificate of said Rebecca Orr was insufficient and that therefore the deed was void, and is advised that the said acknowledgement was sufficient to complete the deed of conveyance.

2nd. The said decrees was further erroneous because if said acknowledgement was not sufficient to complete the deed necessary to make an absolute conveyance of her title in the said property thereby conveyed, it was sufficient to make the said deed an executory contract, and your complainant is advised that it was the duty of the court to have so held under the answer of her guardian ad litem to protect her interest as an infant, because the evidence in the case showed that said deed was made after the Act of April 4th, 1867, by which a married woman was authorized and permitted to make contracts in relation thereto and for the disposal of her separate estate, and at the time said conveyance was made a one-half interest in said tract of land was her separate estate. The evidence in said case also showed that your complainants father had com-

plied with his part of the said contract and had taken full possession thereof and had used and occupied said land from the date of said deed up to the time of his death. The evidence also shows that David M. Orr, the husband of said Rebecca Orr, joined with her in making said deed, and although your complainant does not concede that the said acknowledgement of the said Rebecca Orr is not sufficient, yet if she should be mistaken in this contention, she is further advised that the said deed so acknowledged as aforesaid is sufficient to constitute an executory contract which it was the duty of the court in the case made to have so executed the same against the said Rebecca Orr as to protect the interest of your complainant and her said brother under their answer by their said guardian ad litem.

3rd. The last last mentioned decree is erroneous especially as to the said Robt. S. Orr because of the fact that the court sustained an objection made that the answer of E. W. Pennington and others filed to the amended and supplemental bill of the said plaintiff, whereby the said Robt. S. Orr was made a party to the said suit. It has been stated aforesaid that the said Robt. S. Orr was born on the 6th day of February, 1889, and the first of said decrees rendered in said cause on Sept. 12, 1889, ~~at~~ which time the said Robt. S. Orr was not a party to said suit in any way, and was not made a party until the filing of said supplemental bill filed in said cause on April 2nd, 1890.

At the filing of said amended and supplemental bill, answer was filed by said Robt. S. Orr's guardian ad litem, and also and answer by E. W. Pennington and others, and although the answer of the said guardian ad litem was merely formal, the answer of the said Pennington and others brought to the attention of the court the contention that said deed was an executory contract and ^{was good as an executory contract} ~~not good as a deed~~, which answer being accepted to by the plaintiffs in said cause, said exception was

sustained and said answer rejected on the ground that said contention was new matter, but whether new matter or not as to your said complainant, it was not new matter as to the said Robt. S. Orr, your complainants brother, because he had not therefore been made a party to the suit, and if new matter to your complainant, she was then an infant and said answer was filed one year thereafter, and your complainant is advised that it was the duty of the court in the interest ^{of} protecting the rights of an infant, to have considered said answer as a bill of review and reverse the said decrees as aforesaid upon the ground that the said deed was an enforceable executory contract.

Your complainant represents that she became of age on the 11th day of November, 1907, and represents that this bill of review is filed within the time allowed her by law under section 3435 of the code of Virginia.

Your complainant would further show unto your honor that she and her said brother are interested in the matter disposed of by the said decrees in the following manner.

Your complainant and her said brother are the only children and heirs at law of Robt. S. Orr, deceased.

After the death of their said father, the said Robt. S. Orr, Sr., the said Rebecca Orr instituted the said suit in which said decrees aforesaid were rendered for the purpose of avoiding the said deed above referred to, and for the purpose of recovering one-half of the said tract of land conveyed by said deed, and your complainant here refers to and makes part of this petition the entire proceedings had in said cause including the bills, answers, exhibits, decrees, depositions, Commissioners reports, and all other papers belonging to and included in the said record. The said tract of land in question was at the time of the death of the father of your complainants, in his possession and he was using and occupying the same as his own under the said deed, and your complainants by their guardian and legal representatives continued to own

and occupy said tract of land after the death of their father until the rendition of said decree as aforesaid, after which time commissioners were appointed in the said cause who divided said land, and your petitioner and her brother, under the proceedings had in the said cause herein sought to be reviewed, lost possession of one-half of said tract of land as well as one-third of the other half during the life time of the said Rebecca Orr, as will fully appear by various proceedings had in the said cause. Your petitioners represent that they each will be benefited by reversal of the said decree, because it will give to them property worth in the neighborhood of about \$4000.00, together with such rents and profits as they shall be entitled to recover from those who have withheld it from them.

Your petitioner would further show that her said brother is under the age and an infant having been born on the 5th day of February, 1889.

Your petitioner would further represent and show unto your honor that the said Rebecca Orr some time about the year 1895, departed this life intestate, leaving as her heirs at law your petitioners, and Mary Wells, Clamanda Wells, and William A. Orr, the said Mary Wells, Clamanda Wells, and W. A. Orr being then and have since been residents of the state of Tennessee. Your petitioners are the grand-children of the said Rebecca Orr, and the other three parties above named are the children of the said Rebecca Orr.

Your complainants would further represent and show unto your honor that before the death of the said Rebecca Orr, to-wit, on the 27th day of Feb. 1892, she conveyed the said tract of land so recovered in said suit as aforesaid, to S. H. Wells, husband of said Mary Wells, which said deed is without covenants of warranty. The said deed is recorded in the office of the clerk of Lee County in deed book 29 page 121.

Your petitioner would further represent and show unto your honor that the said S. H. Wells and Mary Wells his wife, by deed dated the 28th day of Feb. 1897, conveyed said tract of land to S. M. and A. B. Saffel, which deed is recorded in deed book No. 33 page 110, and which contains covenants of general warranty. Your complainant is informed that the said sale by the said Wells and wife to the said S. M. & A. B. Saffel had been consummated long before the said conveyance was made as aforesaid, and your complainant is further informed and charges that S. M. & A. B. Saffel obtained from the said S. H. Wells and Mary Wells, and possibly the other heirs of Rebecca Orr a bond to indemnify them against loss to them by reason of a reversal ^{and setting aside} of the decrees entered in the said cause herein sought to be reviewed.

In consideration whereof your complainant prays on behalf of herself and her said brother that the said Clamanda Wells, Mary Wells, William A. Orr, S. M. & A. B. Saffel, be made parties defendant to this bill, and be required to answer the same but not under oath, that an order of publication be made, posted and published as the law requires as to the said Clamanda Wells, Mary Wells, and William A. Orr, the said non-residents: that the said S. M. & A. B. Saffel be required to file with their answer hereto the said bond so executed as aforesaid to them by the said S. H. Wells and wife, that the said decrees as aforesaid be reversed and set aside and relief be granted against the same, and that in lieu thereof the court shall restore to ^{your} ~~her~~ complainant and her said brother the said tract of land, together with all rents and profits, which under the law, they are entitled to recover ^{against} ~~upon~~ the said parties who have been in possession thereof, and that your complainants may have all other, further, and general relief in the premises as the nature of their cause and good conscience requires. And they will ever pray &c.

Edmund T. Bragg P.Q.

(4)

Perdie Orr. & Co

vs { Bill of
 { Review

Mary Lewis & Co

1908 1st Mch. Rules

Bill filed & presented
Orr & Wm A. Orr and
of S. M. A. B. Saffell filed

2nd

To the Honorable H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia.

Humbly complaining your petitioners Perdrie Orr and R. S. Orr, would respectfully represent and show unto your honor that heretofore they filed their original and amended bills in your honors court against A. B. Saffel and others, the object of which was to recover certain lands which had been taken from them under proceedings in a certain Chancery cause of Rebecca Orr, complainant, ~~Against~~ them and others, defendants, which said original and amended bills are here referred to and made part of this additional and supplemental bill.

Your orators represent that as heretofore alleged in the bills and proceedings in this cause, Rebecca Orr departed this life in the State of Tennessee testate as your orators are informed, and indebted to your petitioners as of the date of January 1st, 1910, in the sum of \$633.00 as shown by the report of Geo. P. Cridlin, Commissioner, filed in this cause for the rents and profits of the real estate of your complainants which she had in possession for the years 1890 and 1891, and that the said S. H. Wells also departed this life intestate being indebted to your orators in the sum of \$1425.00 as of January 1st, 1910, for the use and occupation of the real estate of your complainants for the years 1892 to 1897 inclusive, as shown by the report of Geo. P. Cridlin, Commissioner, filed in this cause.

Your petitioners will further represent and show to your honor that at the time of the institution of the said suit as aforesaid by them and the filing of the original and amended bills herein, your petitioner, the said R. S. Orr, was an infant under the age of 21 years, that since the institution and filing of the said original and amended bills as aforesaid, he, the said R. S. Orr has become of age and reached his legal majority of twenty-one years on the ____ day of January, 1910.

Your orators would further represent and show to your honor that the estate of the said S. H. Wells and the said Rebecca Orr has not

been administered on in the State of Virginia and on motion of your complainants the estate of each ~~the~~ said S. H. Wells and Rebecca Orr has been committed for administration to W. Y. Tucker, Sheriff of Lee County, Virginia.

Your orators would further represent and show unto your honor that the said S. H. Wells, as heretofore alleged, obtained the title to the tract of land ~~in question~~ *of the plaintiffs* from his said mother-in-law, the said Rebecca Orr, and ~~resold~~ *and* conveyed the said property to the said A. B. & S. M. Saffel for the consideration of \$3000.00 as shown by the deed of the said S. H. Wells to the said A. B. Saffel, dated February 2, 1897, recorded in deed book 33 page 110; that the said S. H. Wells did not in fact pay anything for the said land but simply was ~~the holder~~ of the legal title thereto for the purpose of selling and distributing the money which should be received therefrom.

Your orator alleges that the said S. H. Wells sold the said property to the said A. B. Saffel and S. M. Saffel, collected a part of the purchase money previous to the death of the said Rebecca Orr and about \$2000.00 after her death, and under the Will of the said Rebecca Orr, paid the remainder over to the said William A. Orr, Mary Wells, and Clamanda Wells. *in equal portions.* And your orator alleges that the \$2000.00 was assets in the hands of the said S. H. Wells for the payment of debts and obligations of the said Rebecca Orr, and your orators allege and are advised that the said claims of your orator for rents and profits for the said years as aforesaid, should have been discharged and paid out of the estate of the said Rebecca Orr. Your orators allege that William A. Orr, Clamanda Wells, and Mary Wells *in equal portions* received all of said money and much more than enough to satisfy the claim of your petitioners for the said rents and profits owing to them by the said Rebecca Orr, deceased.

Your petitioners are advised that under the opinion of the court in this cause the said William A. Orr, Clamanda Wells, and Mary Wells are entitled to recover of your complainants \$75.00 each, with interest from two years after the date of the death of said Rebecca Orr,

the payment of which said sum of money your complainants have no objection, provided they can be reimbursed or paid over the rents and profits which is due them from the said property. But your orators are advised that it is manifestly unjust for the said Clamanda Wells, Mary Wells, and William A. Orr to receive the estate of Rebecca Orr, ~~and to receive the Virginia funds derived from the sale of your complainants property to the said A. B. & S. M. Saffel; and at the same~~ *and also receive said amounts under said deed* not to account to your complainants for ^asum sufficient to satisfy the rents and profits which the said Rebecca Orr is justly owing to them.

The object therefore of this amended and supplemental bill is to off-set as against the claim of the said Mary & Clamanda Wells, and William A. Orr for the said ~~unpaid purchase~~ ^{said} money under the deed ^{awited by} of ~~their father, and claim to the said~~ rents and profits ~~against the~~ said Rebecca Orr, to the extent which the said Clamanda Wells, Mary Wells, and William A. Orr received money and estate from the said Rebecca Orr either as a gift before her death or afterwards, and for the further purpose of obtaining judgment against the estate of the said S. H. Wells and Rebecca Orr *for said rents.*

The prayer therefore of your petitioners is that the said W.Y. Tucker, administrator of the estate of the said S. H. Wells, and the said W.Y. Tucker, administrator of the said Rebecca Orr, and the said Mary Wells, Clamanda Wells, and William A. Orr be made ^{defendant} parties to this amended and supplemental bill, and be required to answer the same, but not under oath, answer under oath being expressly waived; that upon a hearing under the allegations of this amended and supplemental bill, the said Mary Wells, Clamanda Wells, and William A. Orr be required to account for such sums of money as they may have received of the estate of the said Rebecca Orr, that the amount so received by them be credited with the amount which your petitioners are due them by reason of the said deed of April 7th, 1883, from the said Rebecca and David M. Orr, and that a judgment be rendered against the said Mary Wells, Clamanda Wells, and William A. Orr for a sum suffi-

cient to pay the balance owing on their claim against the said estate of Rebecca Orr, not to exceed the amount so received by the said Mary Wells, Clamanda Wells, and William A. Orr from the estate of their said mother, either in her life time or under her Will. And may all other, further and general relief be granted your petitioners that the nature of their cause and good conscience requires, and they will ever pray &c.

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Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GARVA.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia:

Humbly complaining your petitioner, Perdrie Orr, who sues for herself and as next friend for her brother, Robt. S. Orr, a minor, would respectfully represent and show unto your honor that heretofore to-wit at the 1st March Rules, 1908, she filed her original bill of complaint, the purposes of which are fully set forth therein against A.B. Saffel, S. M. Saffel, Clamanda Wells, Mary Wells, and William A. Orr, which said original bill is prayed to be taken as part of this amended and supplemental bill as fully and completely as if set out in full herein. Upon the said bill and the answers of the defendants a decree was entered in the said cause on the 14th day of May, 1908, granting the prayer of the said plaintiffs bill and setting aside certain decrees entered in the Circuit Court of Lee County on September, 12th, 1889, and April 2nd, 1890, respectively, in the Chancery cause entitled Rebecca Orr against E. W. Pennington, administrator, and others, and awarding to your complainant the tract of land ~~which~~ in question in said cause, and also appointing a Commissioner to ascertain certain facts for the further decree of the court upon matters to be presented thereafter, to which said decree as entered last aforesaid, the defendants prayed and obtained an appeal to the Supreme Court of Virginia, which said appeal was duly heard by the said Supreme Court and an order entered thereon on the 24th day of June, 1909, affirming the said decree of May 14, 1908, as will more fully appear by a copy of the said decree herewith filed as part of this bill and marked as exhibit No. "1". By the terms of the said decree of May 14, 1908, on the motion of the defendants the said decree was suspended on condition that the said defendant should execute bond in the sum of \$300.00 for ninety days, and in pursuance of said order to-wit, on the 3rd day of June, 1908, the said defendants A. B. Saffel and S. M. Saffel

with W. E. Orr and Jas, W. Orr as security, executed the said suspended bond with condition to pay all damages which might result to the plaintiff in the said suit by reason of such suspension, as will more fully appear by the said original bond which is herewith filed as part of this bill as exhibit No. "2".

And your petitioner would further represent and show unto your honor that the said defendants did apply to the said Supreme Court and obtained therefrom an appeal upon the condition that the said defendants would execute bond before the clerk of the Circuit Court for Lee County in the sum of \$500.00, in pursuance to which A. B. Saffel and William A Orr as principal, James. W.Orr, W. E. Orr, and C. D. Orr as security, entered into and executed a bond in the sum of \$500 conditioned upon the defendants S. M. & A. B. Saffel, Mary Wells, Clamanda Wells, and William A. Orr performing ~~and certifying~~ the said decree of the Circuit Court for Lee County, in case the same should be affirmed and the said appeal dismissed, and to pay all damages and costs and fees that may be awarded against or incurred by them, which said bond as to its full purport and intent is herewith filed as part of this bill marked as exhibit No. "3".

Your petitioner would further represent and show unto your honor that soon after the said decree of May the 14th, 1908, was entered in the said cause, the said A. B. Saffel and S. M. Saffel began selling and disposing of their property both real and personal, for the express purpose of hindering, delaying and defrauding your petitioner out of the said rents and profits which the said Saffel and Wife would be due and owing to your complainants on account of the use and occupation by them of the said land mentioned in the said original bill and recovered by the said decree of May 14th, 1908.

Your petitioner represents and will show unto your honor that the said A. B. Saffel and S. M. Saffel have disposed and converted into cash all their property situated in Lee County, Virginia, consisting of a tract of land which they sold and conveyed to A. K. DeBusk, and a large lot of personal property consisting of horses, cattle and other things, and have now taken the proceeds of the sale of

said property and left the state of Virginia, and have now become non-residents thereof, except a debt which is owing to the said A. B. Saffel and S. M. Saffel by J. W. & W. E. Orr.

Your petitioners allege that the said J. W. & W. E. Orr are indebted to the said A. B. Saffel and S. M. Saffel for the sum of \$300.00, with interest thereon from about June 8th, 1908, which is evidenced by a note executed by the said J. W. & W. E. Orr and payable to the said A. B. Saffel and S. M. Saffel, and which said debt is owing to the said A. B. & S. M. Saffel in the said County of Lee.

Your petitioner will further represent and show unto your honor that the said A. B. Saffel and S. M. Saffel have been in the possession of the said land for a period of twelve years, receiving and enjoying the rents and profits of the said land, although the said property was rightfully the property of your complainants, and that a reasonable charge for the said land per annum would be \$250.00, with interest thereon from the end of each year in which said rents should have been paid, making a total of principle of \$3000.00 for rents and \$1080.00 as interest, *up to the time of the bringing of this demand & here.*

Said petitioners would further represent and show unto your honor that the said S. M. & A. B. Saffel have other property, the whereabouts of which your petitioner have been unable to ascertain, which said estate your petitioners are informed consists of *visible* tangible property such as money, horses, cattle, money in bank, notes, bonds and obligations payable to them.

The object therefore of this bill is to attach the said estate of the said A. B. & S. M. Saffel to secure the payment of the said rents and profits due to your complainants, *and the costs & expenses incurred in the Supreme Court,* to compel the said A. B. and S. M. Saffel to disclose the whereabouts of the said estate so enshiding as aforesaid, and to subject the same to the payment of such sums of money that this court may ascertain may be due to complainants, to compel the said bondsmen in the said two bonds as aforesaid to pay all damages which has accrued to your complainants on account of the suspension of the said order and the obtaining of the

said appeal, and compel them to conform to the extent of their said bond in judgment of this court.

And your orators allege that on account of the said appeal and the said suspension of the said decree of May 14, 1908, the said A.B. Saffel and S. M. Saffel have been enabled thereby to dispose of their said property and put the same out of the reach of your complainants, and by reason of which said bond your complainants have been greatly damaged to a large extent, to-wit, the sum of \$4180.00.

The prayer therefore of your petitioner is that they be allowed to amend their said bill and that this bill so amended be treated as part of the said original suit, and that A. B. Saffel and S. M. Saffel, William A. Orr, Clamanda Wells, Mary Wells, Jas. W. Orr, W. E. Orr, and C. D. Orr, be made parties to this bill of complaint, and that they each be required to answer the same, but not under oath, answer under oath being expressly waived: that the said A. B. & S.M. Saffel specifically answer where their said property is located, whether it be tangible personal property, money in bank, bond or otherwise, and that the said James W. Orr and W. E. Orr be required to answer how much they owe to the said A. B. & S. M. Saffel, and in what manner and form the same is owing and when due. That the said bondsmen as aforesaid, in the said bonds as aforesaid, be compelled to pay all damages resulting from the suspension of the said order by said suspending bond, and be compelled to perform and satisfy the decree of this court and pay all damages and costs awarded against them to the extent of their said bond: that the estate of the said S. M. & A. B. Saffel be attached in the hands of the said J. W. & W. E. Orr, and any other estate that may be found: that the said A.B. & S. M. Saffel be compelled to pay over to the court a sufficient sum of money to satisfy the judgment of the court upon a final hearing, and that they and their said bondsmen be compelled to pay the costs and damages awarded against them in the Supreme Court in favor of your complainants which amounts to the sum of \$51.82. And may all other further and general relief be granted your petitioner that the nature of her cause and good conscience requires. And she will ever pray &c.

W. H. Bygones
William H. Bygones p.q.

Virginia,

Lee County, to-wit:

I, J. A. G. Hyatt, Deputy Clerk for the Circuit Court for Lee County and State aforesaid, do hereby certify that R. L. Pennington this day made oath before me that the statements in the foregoing bill of complaint are true to the best of his knowledge and belief.

Given under my hand this the 27th day of July, 1909.

J. A. G. Hyatt
Deputy Clerk for H.C.T. Ewing, Clerk.

Pardie Or et al

vs. { Bice
Amended

J. M. Saffer et al

Filed July 28th 1909.

J. M. Saffer D.C.

1909 2nd August Rules

Spa. with attachment
enclosed executed as to
J. M. + W. E. Orr + D. N.
as to them + cont'd for
O.P. as to the other Dept.

" 1st Sept. Rules

D. N. confirmed + O.P.
completed and cause
set for hearing.

Virginia: - In the Circuit Court of Lee County,

The ^{and joint} Separate demurrer and answer of
Mary Wells, and Manda Wells to the Bill of
Complaint of Cordie Orr, and Cordie^{orr} for R.S. Orr,
infant &c., against these defendants, and others,
exhibited in this Honorable Court.

These defendants do demur to said bill of
Complaint and for causes of demurrer shew: -

(1.)

That heretofore and before the said Com-
plainant exhibited her present bill in
this Court, to-wit: On the 19th day of
December 1907, the said Complainant
filed her bill of Complaint in this Court,
against these defendants, and others,
for the review of the same proceedings,
in the same Chancery Cause, and
against the same defendants, as the
said Complainant now prays by
her present bill; to which bill these
defendants appeared by demurrer and
answer, and to which one of their
co-defendants, Wm. A. Orr, also appeared

2/

by demurrer, answer, and Cross-bill; and, the said former bill and proceedings now remain depending in this Court, and the said Cause is yet undetermined and undismissed, and is here referred to.

(2.)

Because the Complainant and all her, and then, Co-defendants in the Cause in which the two decrees were entered that the now Complainant of and out of to have this Court review were appealed from, and Complainant is Estopped to review said decrees until said appeal is perfected - which she has the right to do - or did have the right to do - and acted upon by the Supreme Court of the Commonwealth of Virginia.

(3.)

Because the Trial Chancellor did not err in his decree of September 12th 1889, by decreeing that under the decisions of the Supreme Court of the State of Virginia

the Certificate of acknowledgment of Rebecca Orr Bond of the deed in question was not in accordance with the then existing Statute of Virginia, for failing to certify that the same was her Act and Deed - the said Court not being bound by any subsequent ruling of said Supreme Court.

4.

Because an Annus luctus or posthumus Child, in this Cause and the Cause sought to be reviewed is bound by the proceedings had before birth, there being a guardian ad litem and his answer in the Cause at the time each decree was pronounced, said bill of review on this point is demurred to for making a distinction without a difference, and for claiming a legal and an Equitable benefit without having received any wrong and without having any legal or Equitable right.

Because the Trial Court did not err
 by not considering a question not at issue
 in the proceedings in the Cause, to-wit:
 the question of an executory Contract,
 The Bill did not show that ~~fact~~ ^{fact} ~~did~~
 the answer of the Guardian and ~~item~~,
 or any other pleading, at date of 1st decree.

Because the land ~~described~~ in
 the deed mentioned, of D. M. Orr & Rebecca
 Orr, his wife, was not shown in
 the Cause now sought to be reviewed
 by any pleading whatever to be a
 Separate Estate in the said Rebecca
 Orr, but, upon the contrary, though
 not pleaded, it appears from the
 deed made her and her husband,
 D. M. Orr, that the estate she held in
 said land at the date of the deed
 of D. M. Orr and the said Rebecca
 to R. S. Orr, Sr., deceased, was not a

5/ separate estate from her husband's control,
and these defendants demur for the facts above
stated, and for the fact that she had no
interest in said ^{land} free from right and
claim of her husband on April 7, 1883.

(8.)

Because, the Court did not err in any
respect, for the powerful reason that
the last decree, the 2nd decree Com-
plained of, is a "Consent Decree." (In
decree dated April 2nd, 1898.) At which
time both Complainants were before the Court;
And, which decree by "Consent" sustains the
exceptions to the Answer of E. C. Remington, Admr.,
And Lizzie Orr, widow &c., as to the said matter
themselves setting up an executory Contract -
which decree was Consented to by Counsel
of Complainants and by their Guardian
ad litem, a Lawyer of good mean
ability.

(9.)

Because the "Court" did not err in
his 1st decree Complained of, It
also being a "Consent" decree.

6/
(12)

Because the Complainant, Berdie Orr, had the right to perfect the appeal prayed at the foot of the 2ndnd last and final decree sought to be reviewed, within 90 days after she arrived at 21 years old, and because she did not have the right to elect between perfecting said appeal and bringing a bill to review the decree and the cause in her bill set out.

Wherefore, these defendants pray judgment of this honorable Court, whether they shall be Compelled to make any further answer to said bill, and pray to be discharged with their costs.

But—

Not waiving in any degree their foregoing demand, they Answer Complainant's bill of Complaint and say:

(1)

They deny each and every allegation

7/
of Complainants' bill, except that
they have recently been informed
that S. H. Wells did execute the
bond named by the Complain-
ants, but they deny that any other
person signed it; and they
deny and aver that said bond
is no protection to A. B. & S. M.
Laffle, for the reasons that S. H.
Wells has been dead more than
seven years, he having died
on the 14th of August, 1908, and
for the further reason that he the
said S. H. Wells has no estate
out of which a judgment on
said bond could be collected or
any part of it; and for a final
reason that the Statute law of the State
of Tennessee, where he died and where
his only estate was, says that no
suit shall be brought against a
dead man's administrator after
seven years from his death.

The time has expired, the said
estate settled long ago and found
wanting. (Shannon Code of Tennessee, Sec.
4483.) Having fully answered they
pray to be discharged with costs.

Wm A. Orr

Sol

Bennett & Weaver
of
Mary & Amanda Wells

ads

27 / 87

Rindie Orr et al

Filed 1st Mo. Rules 1908.

H. C. D. Ewing,

clerk.

Wm A. Orr Atty.

LEE CIRCUIT COURT.

Perdie Orr, et al, Plaintiff s.
vs. In Chancery
Mary Wells, et al, Defendants.

The joint and separate answer of A. B. Saffell and S. M. Saffell to a bill of review exhibited against them and others in the Circuit Court of Lee County, under the above styled caption. Said bill of review being to the cause formerly pending in the said court under the style of Rebecca Orr, vs. E. W. Pennington, Administrator, et al.

Not waiving their demurrer heretofore filed in this cause, but insisting thereon, respondents answering, say,

1

The said bill of review should not be allowed, ~~for~~ the decrees complained of in the original suit were plainly right. The certificate of acknowledgement to the deed of April 7th, 1883 was an invalid certificate, and the said deed did not pass the estate of Rebecca Orr in the land in controversy.

But if the said certificate was not sufficient in law yet the decrees complained of were right and should not now be reviewed, because the records in the original suit shows that the said Rebecca Orr was not, as a matter of fact, examined as the law required and did not as a matter of fact, acknowledge the said deed to be her act upon an examination separate and apart from her husband, and did not declare said deed to be her act and deed, and that she willingly executed the same, and did not wish to retract it. The said original suit was a direct attack made by the said Rebecca Orr upon the said deed, and the certificate of acknowledgement attached thereto, and all the necessary parties to determine that issue

were before the court, and the court had jurisdiction to hear and determine that question, and ~~that fact de-~~ ⁱⁿ ~~termined the same.~~ And although the decrees of the court ~~seem~~ ^{Based} to be ~~passing~~ upon the validity of the certificate of acknowledgement as a matter of law, yet ~~that~~ ^{they} may have been ~~based~~ upon a finding by the court that the said certificate was invalid as a matter of fact, as is set up in the bill in the said cause.

Respondents further says the bill in the original suit was to set aside the said deed upon the grounds of fraud and undue influence and the decrees complained of may properly have been based upon a finding that such fraud and undue influence did, as a matter of fact, exist. Respondents are advised that the law is well settled that giving the wrong reason for a right judgment or decree does not invalidate such judgment or decree.

2

Respondents here again state and charge as a fact that Rebecca Orr was not examined with reference to her acknowledgment to the deed of April 7th, 1983 as the law required, and did not acknowledge the same as the law required, she was not examined ¹privately and apart from her husband, and did not have the said writing explained to her during such examination, and did not acknowledge the same to be her act, and did not declare that she had willingly executed the same, and wished not to retract it. They further state and charge as a fact that Robert S. Orr procured the said deed from the said Rebecca Orr through undue influence, amounting to legal fraud, as is set out and charged in the bill in the original suit, and respondents are advised that if the bill of review should be allowed in this cause, then, the said issues which were raised in the original cause may be reopened and heard upon their merits, and respondents refer

to and adopt all the allegation of the original and supplemental bills in said original suit as their own.

3

Respondents further say, that as is shown in the bill of review, the said Rebecca Orr conveyed the tract of land in controversy to S. H. Wells, by deed dated February, 27th, 1892, in consideration of the sum of three thousand dollars, the said deed being without covenants of warranty, and thereafter the said Rebecca Orr died insolvent. The said Wells at the time he bought said land and paid for the same believed he was acquiring good title to the same, and thereafter, to-wit, on February 28th, 1897 the said S. H. Wells with his wife, conveyed the said tract of land to these respondents by deed of general warranty.

Respondents paid to him at the time, in cash the sum of \$3500.00 and at said time respondents believed their title to the said land to be good. They had no notice or knowledge of the infirmities in said titles which are now set up in this bill of review, and they further say they ^{ing} believe their title to be good, took possession of the said tract of land, which was in a badly run down and depleted condition, and ~~they~~ ^{thereon} put permanent, lasting and valuable improvements to the amount of several thousand dollars. They erected a new and substantial dwelling house, barn and other out houses upon the said land, put valuable and permanent fencing upon the same, and many other valuable improvements upon the same in a permanent way and beyond the ordinary and usual expenditure for such purposes. And they are advised that in any event they will be allowed in Equity, the value of such permanent improvements, but they are further advised that a court of equity will not disturb them in their title to the land under the circumstances of this case, and they rely upon the ir ~~plea~~ of being innocent purchasers for value.

Respondents say that the deed from D. M. Orr and Rebecca Orr to R. S. Orr of April 7th, 1883 required the said R. S. Orr to pay to Wm. ^A~~R~~ Orr, Clamanda Wells, and Mary Wells, each the sum of \$150.00, which was a charge upon the said land. ~~It~~ They state that no part of this charge has ever been paid, and in the event that the said heirs of the said R. S. Orr should be decreed the tract of land, ~~therein~~ in controversy they should be required to pay to these respondents the said ~~three~~ amounts of money with interest thereon as required in the aforesaid deed.

Respondents say in this connection that when Rebecca Orr received from S. H. Wells the three thousand dollars of purchase money for said tract of land, as is heretofore set out, she divided the said sum of money equally among her said three children, to-wit, Wm. A. Orr, Clamanda Wells, and Mary Wells,, and the said three parties therefore received their full consideration, and in equity the^{se} respondents are advised that ~~they~~ (the said respondents) are entitled to be substituted to the claim~~s~~ of the said Wm. A. Orr, Clamanda Wells, and Mary Wells in the premises.

5

As against rents and profits claimed in this cause, respondents say that they can not in any event be held to account for more than five years of the same, and they here ~~pleade~~ and rely upon the statute of limitations in such cases made and provided.

Respondents say that S. H. Wells has long since died and his estate is insolvent as they are informed and believe.

Respondent~~s~~ admits the ages of the plaintiffs as set out in their bill of review, and admit all the facts in the said bill which are shown by record evidence, but deny all other statements of facts made in said bill ~~not~~ otherwise

admitted or denied therein. They say that the land in controversy was conveyed to David M. and Rebecca Orr from R. W. Wynn and wife in 1866, and was not, therefore, the separate estate of Rebecca Orr under the act of April 4th, 1877, and all that part of the bill of review bearing upon this question is ineffective,

as these respondents are advised. *The bond of indemnity called for in the bill is herewith filed marked "Bond."*

Now having answered as fully as they are advised

it is material they should answer these respondents pray
to be hence dismissed with the ^{ir}proper costs in this behalf expended.

J. W. Orr

Joine & Morrison

~~BY COUNSEL.~~
Attorneys for A.B. & M. Laffin

This answer is submitted to let the Com-
plainants see not responsible to said Complain-
ants here of review in this.

(1) Said complainants' bill of review alleges
that said A.B. Daffle & B.M. Daffle had taken
a bond to indemnify themselves against any
loss by reason of the reversal of the two de-
cisions mentioned in said bill of review; and
said complainants specifically pray that said
Daffles file with their answer said bond so
given to them.

Said A.B. & B.M. Daffle in their bill do not
file said bond.

Princeton 1880
for said Compls.

Leslie Dwyer &c.

vs
A.B. & B.M. Daffles.

Mary Wells et al.

W.C. Dwyer

VIRGINIA: IN THE CIRCUIT COURT FOR LEE COUNTY.

BERDIE ORR et al

v.

ANSWER.

S. M. SAFFELL et al.

The joint and separate answer of William A. Orr, James W. Orr, W. E. Orr and C. D. Orr to a bill of complaint exhibited against them and others in the circuit court for Lee county by Berdie Orr, suing for herself and as next friend for her brother, Robert S. Orr, styled "An amended bill in the cause now pending in the circuit court of Lee county of Berdie Orr et al v. S. M. Saffell et al."

Not waiving their demurrer, which they have filed in this cause, but relying thereon, these respondents, if required by the court to answer, answering said amended bill, say:

They suppose the allegations of the bill are true which relate to the decree of May 14, 1908, the appeal from said decree to the Supreme Court of Appeals of Virginia, and the order entered in said last named court on the 24th day of June, 1909; and it is true that respondents, W. E. Orr and James W. Orr, together with A. B. Saffell, executed a suspending bond for \$300, dated June 3, 1908; and it is also true that respondents, James W. Orr, W. E. Orr, William A. Orr and C. D. Orr, together with A. B. Saffell, executed an appeal bond for \$500, dated September 26, 1908, which are filed as exhibits with the plaintiffs' bill. In each of said bonds the said A. B. Saffell was principal and the other obligors were sureties. Respondents do not know the facts regarding the alleged sale of their property, both real and personal, by A. B. Saffell and S. M. Saffell but call for proof thereof. If such should be proved, they deny that such disposal was made for the purpose of hindering, delaying and defrauding

1-

the plaintiffs. Neither do respondents know the facts regarding the alleged removal of the said A. B. Saffell and S. M. Saffell from the state of Virginia, but require proof thereof.

They suppose it is true that the said A. B. Saffell and S. M. Saffell were in possession of the land in controversy for a number of years, possibly twelve years, but the exact time is not known to these respondents and they require proof thereof. They deny that \$250 per year is a reasonable amount for rents and profits from the said land, but say that they believe and charge that about \$100 per year would be a fair amount for such rents and profits. They are informed, believe and charge that if the plaintiffs are entitled to recover for rents and profits for the full period during which the said S. M. and A. B. Saffell occupied the said property, then the said Saffells are entitled, as an off-set, for permanent and lasting improvements placed upon the said property, under the belief that their title thereto was good, to an amount that will off-set the said claim for rents and profits, and they, therefore, deny that there is any sum whatever

due to the plaintiffs on this account. *and they deny that they are liable in any event for rents + profits on account of said bond or either*

They state that in the event the said S. M. Saffell and A. B. Saffell do not raise the claim for permanent improvements placed upon the said land, then the plaintiffs can not in any event recover for more than five years of rents and profits before the bringing of their bill of review in the original cause, and they are advised that these respondents have a right to and they do hereby plead and rely upon the statute of limitations made and provided in such cause, but do not thereby waive for themselves or for the said A. B. and S. M. Saffell the right of the latter to set up the claim for permanent improvements as an off-set against all claims for rents and profits.

Respondents, W. E. Orr and J. A. Orr, say that no damage whatever resulted to the plaintiffs by reason of the suspension of the decree of May 14, 1908, for a period of ninety days covered by the suspending bond under consideration, and respondents,

James W. Orr, W. E. Orr, William A. Orr and C. D. Orr, deny that any damage has resulted to the plaintiffs by reason of the appeal to the Supreme Court of Appeals of Virginia, for which the said appeal bond was executed. They say that if any damage for which these respondents are in any way liable that the same is very small. These respondents are each and all advised that these questions as to their respective liabilities on the two said bonds respectively, are questions for a court of law to settle and that the same can not be legally adjudicated in a chancery proceeding, and for this reason they pray that this bill be dismissed, as in their demurrer herein set forth. Respondents deny that by reason of said appeal and suspending bonds, or either of them, that the said A. B. and S. M. Raffell, or either of them, were enabled to dispose of their property and put the same out of reach of complainants, and deny that complainants have been damaged by reason of either of the said bonds.

And now denying all allegations of the plaintiffs' bill not hereinbefore specifically admitted or denied, respondents pray to be hence dismissed with their proper costs in this behalf expended.

*Wm A Orr
James W Orr
W E Orr
C D Orr
By Counsel*

Pendie Orr for & P.

Executives of the A. Orr
et al.

A. B. Saffell et al.

Filed Sept. 18, 1909.

H. C. D. Cuming.
Clerk.

Perdie Orr and Robt. S. Orr by

Perdie Orr his next friendComplainants.

Vs.

In Chancery.

Mary Wells, Clamanda Wells, Wm. A. Orr,

S. M. Saffle & A. B. SaffleDefendants.

This cause came on this day to be heard upon the bill of the complainants and exhibits filed therewith, the joint and separate demurrer of A. B. Saffle & S. M. Saffle, the joinder of the plaintiffs ~~in~~ said demurrer, and issue thereon; the joint and separate demurrer of Mary Wells & Clamanda Wells, the joinder of the plaintiffs ~~in~~ said demurrer, and the issue thereon; the separate demurrer of Wm. A. Orr the joinder of the plaintiffs in said demurrer and issue thereon, the ~~joint~~ and separate answer of Clamanda Wells and Mary Wells, the separate answer of Wm. A. Orr, the joint answer of A. B. Saffle and S.M. Saffle, and general replication to each of said answers, and was argued by counsel.

On consideration of all which it is adjudged ordered and decreed that each of the said demurrers be and the same are hereby ~~over~~-ruled. And the said cause coming on to be heard upon the bill of the plaintiffs and exhibits filed therewith, the several answers of the said defendants and general replication thereto, the court is of opinion that there is error of law apparent upon the face of the record in the Chancery suit of Rebecca Orr Vs. E. W. Pennington, Admr. et al., in respect to the two decrees complained of in the bill of the complainants in this cause, namely the decrees of Sept. 12th 1889, and April 2nd, 1890 respectively, in so far as they hold the certificate of acknowledgement of Rebecca Orr to the deed of David M. & Rebecca Orr to R. Simpson Orr, defective and bad, and in so far as said decrees affects the title of the said Perdie Orr and Robt. S. Orr which *and as his heir at law* they acquired under said deed to their father; and that said decrees should be reviewed, annulled and set aside; and the said complainants

2

restored to their property, which they were deprived of by reason of said decrees; It is therefore adjudged ordered and decreed that said decrees of Sept. 12, 1889, and April 2nd, 1890, entered in the said cause as aforesaid in so far as they affect the title of Perdrie & Robt. S. Orr which they acquired as heirs of their father, R. S. Orr under the said deed of Rebecca Orr & David M. Orr under date of April 7th, 1883, be and the same are each hereby vacated, annulled and set aside, and declared for naught; and that the plaintiffs Robt. S. Orr & Perdrie Orr recover of the said A. B. Saffle & S. M. Saffle that part of the said tract of land conveyed in the said deed of April 7th, 1883, of David M. Orr and wife to R. S. Orr, which they the said A. B. & S. M. Saffle now have in their possession and which is fully described in the deed of S. H. & Mary Wells to A. B. & S. M. Saffle, dated February 28, 1897 and recorded in deed book thirty-
and to which said place of recordation reference is here made for
three page one hundred ten, and unless possession thereof is delivered to the said plaintiffs or their representative within thirty days from the date of this decree, then upon the application of said plaintiffs or their attorneys, the clerk of this court will issue a writ of possession for the ^{said} tract of land in favor of the said plaintiffs against the said A. B. & S. M. Saffle, directed to the sheriff of the County of Lee as the law directs in such cases; and it appearing from said plaintiffs bill that certain rents and profits are claimed by the said plaintiffs as against the said defendants for the use and possession of said tract of land as aforesaid, from the time of their eviction there~~of~~; and the court deeming it necessary to have the value of these rents, ^{or the} use and occupation ascertained by a commissioner, it is therefore adjudged, ordered, and decreed that George P. Cridlin, who is hereby appointed a special Commissioner for the purpose, ~~and~~ after having given the parties hereto, or their attorneys ten days notice of the time and place of his sitting, will proceed to ascertain and report to this court all rents, if any, and against whom said rents are chargeable that the said plaintiffs are entitled to, and an

more particular of the cause

itemized statement of the amounts thereof.

He will also ascertain and report to court whether or not A.B. & S. M. Saffle have put any permanent improvements upon said property, and if so, the value thereof; and he will report any other matter specially required by him by any party interested, ~~hereto~~ ^{where} which he himself may deem pertinent.

Said Commissioner will also ascertain and report whether or not Robt. S. Orr, or his administrator or heirs, have paid any sums of money under the ~~deed~~ of April 7th, 1883, under the provision of said deed in which the said Robt. S. Orr was to pay ^{certain} ~~sums~~ sums of money to William A. Orr, Clamanda Wells, and Mary Wells, and if any of said sums have been paid, the dates and amounts thereof.

And this cause is continued,

Memoranda. The defendants, A.B. and S.M. Saffle feeling themselves agrieved by the foregoing decree, and having ~~maxed~~ expressed a desire to appeal therefrom and moved the court for a suspending order thereto, it is therefore ordered that the foregoing judgement and decree be suspended for 90 days upon condition that said defendants or some one for them execute bond before the clerk of this court in the penalty of \$500.00, conditioned as the law requires in such cases.

Order On itae

75. } Duesen

May Weiss itae

Entered in C.B.
8, page 381 v.

(2)

Enter this
May 14 1908
H. A. as Silver

Reference to Correlation.

The deposition of A. G. Hyatt and others taken before me Geo. P. Gridlin, Commissioner in Chancery for the Circuit Court for Lee County and Special Commissioner directed to take an account of certain rents, profits and improvements, pursuant to a decree rendered in the Chancery cause of Perdie Orr and others against A. B. Saffel and others, pending in the Circuit Court for Lee County, which said decree was entered on the 14th day of May, 1908, which said depositions are taken to be read on behalf of the plaintiffs in said cause, pursuant to notice hereto attached, at the office of the said Commissioner on the 30th day of July, 1909, and it appearing that the said notice has not been served the length of time required by said decree, Jas. W. Orr of counsel for the defendants appears thereto and waives the said ten days notice and agrees that the taking of the said account shall proceed without the said ten days notice in the same manner as if the said ten days notice had been given.

Present: Pennington Bros. & B. H. Sewell, counsel for complainants.

Jas. W. Orr of counsel for defendants.

A. G. Hyatt, a witness of lawful age being duly sworn deposes and says:

The taking of these depositions and the taking of the account by the Commissioner is objected to by defendants because it is their intention to apply to the court to impanel a jury to assess the damages of the plaintiffs and the allowance to the defendants for improvements &c. as provided by statute.

Jas. W. Orr, counsel for defendants.

Q-1- Give your name, age, residence and occupation?

A. A. G. Hyatt, 42 years, reside at Pennington Gap, Lee County, Cashier of Bank.

Q-2- Are you acquainted with Perdie and Robt. S. Orr, Jr., the complainants in this cause. If so, how long have you known them?

A. I am, and have known them about 16 years.

Q-3- You may state who their guardian is, if any they have?

A. I am their guardian.

Q-4- How long have you been acting as their guardian?

A. About eight years.

Q-5- Are you acquainted with the lands in controversy in this cause known as the land on which A. B. Saffel and S. M. Saffel lived in this County? If so, how long have you known these lands?

A. Yes, I have seen it almost every year for the past eight years some two or three times a year.

Q-6- How far is Pennington Gap, the place at which you reside, from the land in controversy?

A. About seven or eight miles.

Q-7- You say you know the lands in controversy and have had occasion to see them three or four times a year for the last eight years. Tell why it was that you saw these lands?

A. As guardian for Perdie and Rob Off, I have had charge of their lands adjoining the lands on which Saffel lived and taking care of their property I have been near the other lands.

Q-8- Since you have known the lands in controversy in this suit please state what, in your opinion, would be a fair cash rental value of these lands per annum?

A. A very conservative estimate would be \$200.00 per year I think based on what I have been getting for the adjoining property which was considered a half interest in the farm.

Q-9- How long if you know has A. B. Saffel and S. M. Saffel been in the possession of the lands in controversy and taking and using the rents and profits from the same?

A. I do not know exactly the date of the trade at which he bought the property, but the year it was made, two of the Wells boys were over there and in the bank talking to me about the trade. From that visit it appears to me about fifteen years since he has been connected with it, still I did not have direct knowledge of it until I took charge of the adjoining tract.

Q-10- Have you recently been on the land in controversy in this case?

A. Yes. I was on it last Wednesday.

Q-11- While on this land on last Wednesday the 28th day of July, 1909, state whether you made any observations as to its condition with reference to fencing, and if so what you found in regard to the fencing on this land?

A. There was very little if any fencing between Wygal and Saffel except a rock fence below the road. From the end of the rock fence down to the river there was no fencing at all. The only fence that amounts to anything is on the partition line between our part of the property and the rock fence along the edge of the road near the house. The other fences on the eastern side of the boundary are rails about five or six rails high and a good many of them in bad shape and rotten.

Q-12- When you say other fencing, what fencing do you mean?

A. The fence on the eastern side of the boundary is a rail fence between Wolfe and Saffel place and is above the road.

Q-13- Who adjoins the lands in controversy on the eastern side?

A. John Wygal below the road and I suppose J. W. Wolfe above. Then Wygal has some on the ridge side on the upper end.

Q-14- You spoke of some rock fencing along the road and also below the road between Wygal and this land in controversy. Do you know who built those rock fences?

A. I do not know. I have been seeing them there for a long time in passing up and down that road. A little piece of the rock fence from the gate out to the corner and garden fence has been built within the last eight or ten years. The balance has been there longer. I do not know who built them.

Q-15- What buildings are now on the premises in controversy?

A. A small six room dwelling, barn and log crib, smoke house, well house, and chicken house.

Q-16- You may describe the dwelling house mentioned by you and its condition?

A. The dwelling is known as the ell pattern, front part of the building is about thirty feet long, fourteen feet wide, and fifteen feet high, the ell is only one story, the main building is covered

with two foot boards. The main building is one and one half stories high. The ell contains kitchen and dining room, small one story portico in front with a door entering into each room off of the portico. stack chimney in the middle of the main building with four fire places in it, two below and two above. The wall is weatherboarded on the out-side and ceiled overhead inside, and so far as I was able to see was ceiled underneath paper on the side walls, but was not papered overhead. I believe the dining room is not papered on one side, nor the kitchen not papered at all. The main building is covered with two foot boards and the ell or dining room and kitchen part, together with a narrow porch on the eastern side of the ell, is covered with sheet iron. The building is painted on the outside and paint~~ax~~ ceiling overhead inside painted.

Q-17- What was the condition of the roof on the dwelling house when you where there on last Wednesday?

A. The board roof appears to be almost rotten, iron roof appears to be in fair condition.

Q-18- About what is the dimension of the ell part of the house? About 22 x 12 I guess, and the ceiling about seven feet.

Q-19- Was there any stairway in this building, if so, where was it and of what kind of material did it seem to have been constructed.?

A. There is a small stairway from the dining room to the second floor about two and one-half feet wide, winding in its course, apparently constructed from material which had been in a stairway heretofore.

Q-20- What kind of foundation if any did the house have under it?

A. I did not examine the foundation. My impression is that it is on pegs. Below the weather boarding it is kinder boxed up with rough poplar lumber. The front part of the building is apparently three feet from the ground. The back part is dug out in the ground.

Q-21- Is there any other chimney or flue in the house other than the stack chimney spoken of by you hertofore, if so, where it is?

A. There is a small piece of stove pipe sticking down in the kitchen and a flue in the kitchen. I do not think there is any flue or chimney in the dining room.

Q-22- State if you have made any figures or estimates upon the value of the house.? Please give in your opinion what ~~it~~ is reasonably and fairly worth?

A. So far as I am able to judge, the building ought to be constructed for \$650.00 to \$700.00 outside, and that out of new material.

Q-23- If you made any observations as to what kind of material either old or new, that said house was made, tell what it was? .
The front all appears to have been in some other building and the ceiling on the wall of the dining room which was exposed, together with the ceiling in the kitchen appeared to be of the same kind of material having been used formerly in other buildings. The doors, with the exception of the two front doors entering from the portico also appears to have been used on some former building. The only material that appears to have been new is the ceiling overhead up stairs and the weather boarding.

Q-24- You may state whether you remember that just back and south of the dwelling house of which you have been speaking, there once stood a brick building?

A. Yes, I have seen the building many times in passing that road.

Q-25- You may state if you know what became of that brick building?

A. It was torn down during the time Mr. Saffel occupied the premises, presumably by him or some of his hands. There is now only the stone foundation with about six or eight feet on one corner of the building remaining.

Q-26- Were you ever in or about the old brick building before it was torn down, and can you give us some idea of the length and breadth and ~~width~~ height?

A. I was never in it and I have never been closer to it, until last Wednesday, than the line fence about seventy yards west of it.

Judging from the foundation which now shows for itself and from my observation of it, it is probably fifty feet long including the kitchen part. My recollection is that it was two story high except the kitchen.

Q-27- From what you remember of the old brick house and the present dwelling house, which in your opinion would be ~~xxxxxxxx~~ worth the most?

Objected to because irrelevant and immaterial.

J. W. Orr.

A. So far as I am able to judge the brick building is worth more than the present building.

Q-28- You say there is a smoke-house and a well-house on these premises, also a stable or barn and a crib. You may state whether these buildings or either of them appear to be new or old?

A. The barn appears to be very old, also the crib, except the crib has a roof on it which has been put on ~~the~~ in the past year or two. The smoke house frame work appears to be old hewed lumber. The walls are rough boxed lumber which has been sawed in the last eight or ten years. The smoke-house is about twelve by eighteen feet I guess and seven feet high, covered with boards, the sills and sleepers are old stuff, no floor on the sleepers. The well-house is about six feet square I guess, three sides are weatherboarded, one side is open. I did not notice what kind of roof it had on it.

Q-29- The barn you speak about is it not about the same old barn and crib that was on the premises before Saffel went into the possession of this land?

A. I think they are.

Q-30- You stated that in your opinion that the dwelling house on these premises have been built from \$650.00 to \$790.00. What in your opinion has been the deterioration of this building since it was built, if ~~any~~ it was deteriorated in any way. In other words what do you consider its present value to be?

A. The building is in a bad state of repair, coat of paint hav-

ing almost disappeared, a good many of the window lights gone, banisters around portico nearly all gone, the boxing around the kitchen almost rotten, and the foundation, together with the floor in the porch along the side of the dining room and kitchen almost rotten. At the present time \$500.00 would be a conservative ~~rental~~ value for the ~~land~~ *buildings*.

Q-31- What do you think ~~is~~ the present value of the smoke-house and well-house?

A. About \$75.00 together.

Q-32- Is there a well on the premises?

A. There is.

Q-33- What kind?

A. Drilled well from the appearance of it I suppose.

Q-34- Do you know how deep it is?

A. I have understood it is twenty-eight feet deep. I only know that from what I have heard said about it.

Q-35- Has there anything been done to the barn and crib other than mere repairs on it to keep them up?

A. So far as general appearances goes I think not. One pen of the building and a part of the wall on the western side has been torn down and part of this material moved on the south side making an open lot. The barn is in bad state of ^{repairs} ~~affairs~~ now, almost ready to fall down.

Q-36- You state there was a fence between the Saffel land and the land of the complainants. Do you know who built this fence?

A. My understanding is that Saffel constructed the line from the road to the river, and that the guardian or representative of Perdrie & Rob Orr constructed the part above the road to the John Wygal line.

Q-37- Out of what kind of material and who constructed that part of the fence running north towards the river?

A. Constructed out of posts and barbed wire. The posts I think is what is known as Coffee wood up there. It resembles locusts but does not last as long, and there are eight strands of barbed wire on on this fence.

Q-38- What is the present condition of this line fence on both sides of the road?

A. Rather bad state of repairs. A great many of the posts are rotted off at the ground. The line above the road has been repaired by driving locusts stakes by the posts, and stapling up the wire to those stakes.

Q-39- Who did or had that done?

A. I did.

Q-40- How long in your opinion has this fence been there?

A. About twelve to fifteen years.

Q-41- Supposing this farm was originally owned by R. S. Orr, Sr., had never been divided between Rebecca Orr and the complainants in this cause, was there any necessity for the fences of which you have just been speaking?

A. No, I think not.

Objected to because irrelevant and immaterial.

J.W.Orr.

Cross Examination.

XQ-1- Were you well acquainted with the old brick dwelling before it was torn down?

A. No, only from the general appearance in passing the road and in going up the line fence.

XQ-2- How far did you pass from it in passing the road and along the line fence?

A. Estimated about seventy-five yards on the western side along the line fence and it is about one hundred and fifty yards from the road I guess. I never was in the building.

Q-3- Were you well acquainted with the barn or stable before Mr. Saffel made his purchase?

A. The only acquaintance I had with it is what I saw of it in passing the road.

XQ-4- How far was the stable or barn from the road?

A. About seventy-five yards I guess.

XQ-5- Do you know whether Mr. Saffel built any addition to the

barn or shedded the pens or stables around after he moved there?

A. I do not know.

XQ-6- Do you know whether Mr. Saffel sowed any grass seed on the place and set any of it in grass as it was provided?

A. No.

Q-7- I believe you have stated that \$200.00 would be a reasonable rental value for the place per annum. In making this estimate did you make any allowances for taxes to be paid and the keeping of the farm in repair, cutting bushes &c, or how was that?

A. I estimated the value from what I have been getting for the adjoining farm and also from the appearance of the present crop on the Saffel part, and made an allowance or deduction for the taxes and for fences in about the same proportion that I had spent on our side, although he has not done as much of that kind of work we have.

XQ-8- Have you been able to realize \$200.00 annual for the portion of the farm that you had in charge as guardian over and above expenses and keeping up the place?

A. For the past three or four years more than that, before that time not that much, because of the fact that a great deal of the boundary was covered up with thickets and the fence rows were out in the middle of the field practically, and the fences were all in bad state of repairs, and we have had to build new fences all over our part of it, but for the past three or four years we have realized more than \$200.00 for our side, net.

XQ-9- Was not that part of the farm purchased by Saffel in about the same condition as to bushes, filth, fencing &c. as that portion of which you had control?

A. No, the boundary below the road was in much better repair than our side, above the road and above the house there was an alantus thicket that he has cleared out in the last five or six years, containing five or six acres.

XQ-10- How many acres are there in the piece purchased by him

and how many acres in the other portion of which you have had control as guardian?

A. 87 and 131.

XQ-11- If the old brick dwelling was in a dilapidated condition at the time it was torn down and the walls cracked, and it in fact dangerous to be occupied as a dwelling, then would you think that it in that condition was worth as much as the new house built by Mr. Saffel on the land?

A. From the standpoint of actual worth, judging from the general appearance I think it would. If it was in that condition and actually dangerous to live in, it would simply resolve itself in the question of the value of material in the old house.

Re-Examination.

Q-1- Please state whether or not the ~~material~~ nature of the Saffel land as well as the lands adjoining it and of which you had control is not such that it becomes necessary to cut certain bushes almost every year in order to keep it in good condition?

A. Yes, there is nearly all over the place scattered about in the rock ledges something known as the alanthus bush that grows very rapidly in wet seasons, and it is necessary to cut twice a year to keep them down. There is also a good many pawpaw bushes and iron weeds.

Q-2- State whether Mr. Saffel with the year 1908, did any bush cutting on this land?

A. I think not from the general appearances. The bushes appeared to be two or three years old on his side.

Q-3- What in your opinion would it have been worth to have cut the bushes that good farmers would have cut for the year 1908, on the Saffel side of the land?

A. \$15.00 I guess would have cut them.

Q-4- State whether or not in your opinion the rental value of the Saffel land, if properly kept up, as a reasonable farmer should

keep it up, would be worth as much per annum as that part of your farm which you have had control of as guardian for said complainants.

A. Taking into consideration the fact that there was a dwelling and orchard, the Saffel part is fully as valuable as the other side and should have produced better results from the standpoint of dollars and cents, because he has had it in cultivation and getting crops from it while ours has been in grass all the time and has been grazed and an acre in corn will produce more than an acre in grass.

Q-5- Since you have known the lands state whether Mr. Saffel has cultivated his side in corn and wheat more than the side which you have had control,

A. He has during my acquaintance with the lands cultivated about forty and fifty acres of it all the time each year, or had it done by renters. All our side of it has been entirely in grass and used for grazing purposes only.

Re-Cross Examination.

XQ-1- Is it or not a fact that an acre of good land in grass for grazing purposes will yield as much ~~clear~~ money as that same land cultivated in corn or wheat when you take into consideration the labor necessary to make and mature the crop?

A. No, I think not.

XQ-2- Do you not think that \$200.00 per annum would be a fair rental value of the Saffel land exclusive of improvements put on the land by Mr. Saffel?

A. Well if the garden and orchard lots were set in grass and the buildings out of the way, I am inclined to think that a man can get \$200.00 a year out of it that way.

Re-Direct Examination,

Q-1- Is it not a fact that lands which are cultivated in corn wheat &c. will sooner or later become exhausted and less valuable than lands that have been kept in grass and grazed?

A. It is a fact. Continued cultivation exhausts the lands so that it wont produce anything much unless you have proper rotation of

crops and procure rest to replenish the exhausted products by sowing grass and giving rest periods.

And further this deponent sayeth not.

(Signature waived.)

Adjourned to Dryden, Virginia, on to-morrow.

shown that the above is not a copy of the original but a copy of a copy of the original.

For the purpose of this document, the above is not a copy of the original but a copy of a copy of the original.

(Signature required.)

Admitted to the office, and this, on the 10th of the month.

Perdie On for
vs Dept of A. G. H. H.
A. B. Laffell et al.

Met pursuant to adjournment at Dryden, Va. On the 31st day of July, 1909,

Present E. J. Farrington of counsel for plaintiffs and J. M. Orr of counsel for defendants.

J. M. Mosley, a witness of lawful age being duly sworn deposes and says:

Q.1.-- Give your age, residence and occupation.

A.-- I am 48 years old, reside near Dryden, Va., and am a farmer.

Q.2.-- Are you acquainted with that part of the David M. Orr farm which was recently occupied and used by A. B. and S. M. Gaffel, if so how long have you known that part of said farm?

A.-- I am acquainted with that part of said farm, have been acquainted with it about 15 years.

Q.3.-- Do you remember about the time when Mr. A. B. Gaffel and his wife S. M. Gaffel moved on said land?

A.-- It has been about 12 years ago the best I can recollect.

Q.4.-- In what house did they first live on said land, and for about how long in that house did they live?

A.-- They lived in the brick buildings when they first moved there, they lived in them either a year or two years, and I don't know which.

Q.5.-- What became of the brick building in which they first lived on said farm?

A.-- It has been torn down, and it is my understanding that he had it done.

Q.6.-- Where did A. B. and S. M. Gaffel live on said land after said brick building was torn down?

A.-- They moved into a new house which they built and which is now there on the land.

Q.7.-- Have you recently seen this new house, if so when?

A.-- I saw it to-day.

Q.8.-- If you noticed, tell what kind of lumber the ceiling and flooring of this new house was constructed?

A.-- The ceiling overhead looks to be new lumber, except in

the kitchen and dining room. The floors and the side walls, in all the house and the ceiling overhead in the dining room and kitchen seem to be old lumber that had been used before.

Q.9.-- Did not the ceiling of the side walls of the whole house and the ceiling overhead in the kitchen and dining room come out of lumber that was in the old brick building at the time Saffels had the same torn down?

A.-- I could not tell you where it came from as far as that is concerned, for I wasn't there when it was taken out.

Q.10.-- You may state whether, in your opinion the building of the new house on said land and the tearing down of the old brick house on the same enhanced the value of the tract of land.

A.-- The new house is a little more safe than the old one was, and may add a little to the land in that way.

Q.11.-- How much more, in your opinion would it add to the value of the farm, by the building of the new house in room of the old brick house?

A.-- If I was buying it, I don't know that I would make any difference. I would as soon have it with the old house on it as the new. That is my idea about it.

Q.12.-- If you have noticed, you may state whether bushes, briars and weeds and so forth have been kept cut down.

A.-- Yes, I think they have.

Q.13.-- From your observation of said land state whether or not the bushes, briars and weeds were cut down for the year 1900.

A.-- Well, I can't tell whether they have or not,

Q.14.-- Are there not many more bushes, briars and weeds and so on on this land than on the lands adjoining?

A.-- Well it looks to be.

Q.15.-- Are you acquainted with the nature of alanthus bushes?

A.-- I am, they are a rank and fast growing bush or tree.

Q.16.-- In order that a farm may be kept up where these bushes grow, is it not necessary that they be annually cut down?

A.-- They ought to be cut every year.

Q.17.-- Is it not a fact that the soil of the land in controversy in this case, is infested with the alanthus plant?

A.-- Yes they grow there in the rocky portions of the farm where the land is not cultivated.

Q.18.-- If you noticed when you was at said new house to-day you may tell what the condition of the roof was?

A.-- I did not notice the roof.

CROSS EXAMINATION.

Q.19.-- Were you or not, well acquainted with the old brick house or dwelling before it was torn down?

A.-- I was acquainted with it, and was in it several times while J. Orr lived there and a time or two after his death.

Q.20.-- What was its condition in regard to the state of repair, standing up and so forth?

A.-- It was crack^d some about and needed fixing. The kitchen part was cracked. Don't remember to have noticed the roof.

Q.21.-- Do you remember whether or not, the south wall of the main building was at any time propped by J.S.Orr or J.B.Saffel to prevent its falling down?

A.-- I never noticed it being propped.

Q.22.-- Do you know why Mr.Saffel and his wife built a new house, and moved out of the old brick building?

A. No, I don't know why they did that.

Q.23.-- Was it not because they did not consider the old house safe to live in?

Obj. The foregoing question and any answer thereto is objected to because any answer the witness might make to the question propounded would be self serving because he would have to state as the question is propounded what Saffel and wife told him about the matter.

J.Pennington atty.

A.-- I could not tell you what they considered about it for I don't know that.

Q.24.-- Is it not a fact that the kitchen part of the old brick building was badly cracked, and was considered unsafe to ex

occupy before Mr. Saffel moved to the place?

A.-- The far end of the house, where it was claimed to be the kitchen, was cracked, and I would not have considered that safe but as to the main building I do not know.

X.Q.7.-- Please state whether or not Mr. Saffel and wife dug or bored a well on the premises, after their purchase, and if so what kind of a well as to depth water and so forth, and where situated?

A.-- There has been a well bored there since they have been there but I do not know the depth of the well. The water in it is good cold water and there is a pump in it. The well is situated near the ell of the building and handy to the door.

X.Q.8.-- State whether or not Mr. Saffel and wife planted out an orchard on the premises, and if so the kind and number of fruit trees as near as you can?

A.-- There is an orchard planted there, and has been planted since they have been there and I suppose they had it done. I can not give the kind or number of trees. I have never been in it. From the upper side of the yard I saw some apple trees and peach trees in it.

Re- Examination.

Q.-- Tell how high the old brick house was, that was torn down?

A.-- It was two stories, except the kitchen part, which was only one story.

Q.-- About how high were the rooms in that house.

A.-- About 8 feet, as near as I could come at it.

Q.-- How long after Saffel and wife moved on the land, was it that he put out the orchard spoken of by you?

A.-- The best I can remember it was ~~huzik~~ put out after the house was built. The trees are bearing; I saw some fruit on them to-day.

And further this deponent saith not.

Saffel

W. Hughes, another witness of lawful age being duly sworn deposes and says:

Q.1.-- Give your age, residence and occupation.

A.-- I am 29 years old, live near Dryden, and am a farmer.

Q.2.-- Are you acquainted with A.B. Saffel and J. Saffel, his wife, and if so how long have you known them?

A.-- I am acquainted with them, have known them about 18 years.

Q.3.-- Where have they lived since you knew them?

A.-- They lived on the farm known as a part of the Simp Orr farm, I reckon you would call it.

Q.4.-- Do you remember the old brick dwelling house that was on the farm at the time Saffels moved on it?

A.-- Yes.

Q.5.-- You may state whether the Saffels lived in this old brick building, and if so about how long?

A.-- They did live in it, that is in a part, they did not live in the kitchen end of it. They lived in it something like a year the best I remember. I thought the kitchen end was quite dangerous.

Q.6.-- How long after Saffels moved on said farm until they built the new house on it?

A.-- About a year, as I remember.

Q.7.-- ~~Where~~ Where were you living when Saffels built the new house on said land?

A.-- I was living at Dryden about one and one-half miles away from it.

Q.8.-- What kind of fencing is on the east side of said land?

A.-- There is above the road some rail fence, with some posts put up along it with two wires on it near the road and after it gets up further from the road there is only one wire. Below the road there is some rock fence for about 40 yards, and from there on to the river, about 300 yards, I guess, there is no fence at all, just some rails scattered along where there was once a fence.

Q.9.-- State whether Saffels while they have been in possession of the lands in controversy, and especially for the last two or three years, have kept the alanthus bushes &c. cut off of said land

A.-- He has not cut any since this suit was decided at Jonesville, which was, I think in May 1900.

Q.11.-- State whether or not in order to keep the farm up, it is necessary to annually cut from said land the Alanthus bushes &c. in order to keep it in a reasonable farming condition?

A.-- I suppose it would.

Q. What, in your opinion would it be worth to cut the bushes, briars, weeds and so on that is now on said land, in order to put it in a reasonably fair farming condition.

A.-- I suppose that \$18.00 would cut the bushes off of the pasture land.

Q.12.-- Since Saffels have been in possession of said farm, state whether or not they have made any new cross fences on it that would enhance its value.

A.-- They have made some around a corn field above the house.

Q.13.-- How much is there off this fencing?

A.-- There is about 5 acres fenced up and they fenced one side and two ends.

Q.14.-- What kind of fence was it?

A.-- Four strands of barbed wire.

Q.15.-- About how long ago has it been since this fence was built?

A.-- Four years ago this last spring.

Q.16.-- About what was the length of this fencing?

A.-- About 80 to 90 rods.

Q.17.-- How far apart are the posts?

A.-- About 16 feet.

Q.18.-- If a man who would want to buy the whole farm, would he give any more for this fence having been built?

A.-- It is owing to what a man wants with it. If he wanted it to cultivate, it would be an advantage, but if he wanted it to graze, it would be a disadvantage.

The yard around the new house and a garden has been fenced with a woven wire fence with two barbed wires on top part of the way around. There is also a bull lot containing something like

one acre, which they fenced on two sides. On the fence between the pasture land and the bottom land which is in corn he has put two stands of wire, about 300 yards long, and also around the river they have put up two stands of wire about 400 yards, and then a little piece with four wires about 200 yards long.

.Q.--- On the whole are the fences now on the land in any better condition than when Saffels first took possession of it.

A.--- On the whole I think you could say that it is some better than when he got it in possession, some of it is better and some little of it is not as good.

.Q.1.--- Are the fences now on the land in any better condition than they were when W.L.Orr died.

A.--- I do not know.

GROSS EXAMINATION.

A.Q.1.--- Did Mr. Saffle build any part of the partnership fence between the parcel purchased by him and the other portion of the farm, and if so how much?

A.--- He built it from the main road to the river, which was considered to be about one half the line. My best recollection is that he built it a 9 wire fence, and he has taken wire off till there is just at 7 wire fence there now. The post in this fence are about 14 feet apart.

.Q.2.--- State if you know or have any idea what it was reasonably worth to do or build all the wire fencing of which you have spoken as being done by Mr. Saffle and his wife?

A.--- I suppose that \$100.00 would cover it; that is my best judgment.

.Q.3.--- Have you ever bought any fencing wire and have knowledge of what it costs?

A.--- I have bought some, and at different prices, from \$7.15 to \$8.25 per 100 pounds.

A.Q.4.--- State whether or not Mr. Saffel during the time he was in possession, sowed any grass seed on the land, and if so how much?

Obj.-- The forgoing question and any answer thereto is objected to because immaterial.

H.H. Pennington, atty.

A.-- As well as I remember, the second year he was there he sowed a field containing about 8 acres in blue grass, but I do not know how much it took to sow it. He also cleared up a thicket of about one acre, which is included in this 8 acres. This 8 acre piece is in blue grass yet. He also sowed the field just below the road containing something near 17 acres, in blue grass, and it is ~~is~~ still in blue grass. He had owned the place something like 3 or 4 years I suppose when he sowed this. He has in fact had the whole place except about one acre, in grass at some time since he owned it, that is the bottom land, there is some land above the house that it is not cleared up.

X.C.F.-- State whether or not Mr. Saffel's manner of farming and using the land was such as to increase its productiveness and value or decrease the same?

A.-- I suppose he has been improving the land ever since he has had it. It is some better than it was when he got it in possession.

Re-Examination.

Q.-- I suppose, sowing the grasses on the lands which you have mentioned, in your opinion increased the value of the land, is that your idea of it?

A.-- Yes.

Q.-- You also have an idea that cultivating in corn increases the value of it do you.

A.-- No, Sir.

Q.-- How much of the grass land sowed heretofore by Saffel has been plowed up and put in corn since May 1900?

A.-- About 8 acres.

Q.-- Why did Saffel brake up the grass lands and put it in corn if grass on it increased its value?

A.-- I suppose it was just like a man plowing up a meadow when the weeds get too far along, so as to re-set it again.

Q.-- Where was the 9 acres of grass land that was broken up and put out in corn by Saffel?

A.-- Seven acres below the road and on the west side of the place, and two more below the road on the east side of the place.

Q.-- What was on the ground in the year 1907, where Coffman has corn this year?

A.-- Corn.

Q.-- What in 1908?

A.-- Wheat and millet.

Q.-- What in 1909?

A.-- Corn. I broke it up from a blue grass sod that year.

Q.-- What in your opinion is the present value of the fencing done by Saffel, as compared with their original cost.

A.-- I suppose its value is about half of its original cost.

Q.-- Is it not a fact that the piece of land adjacent to and just below the public road, which you say Mr. Saffel some time ago sowed in blue grass, is now filthy, grown up with a great many iron weeds, other weeds and sedge grass.

A.-- It is just ordinary grass and there is sedge grass and iron weeds in it.

Q.-- As a good farmer ought this ground not now to be plowed up in order to get rid of sedge grass, iron weeds &c.?

A.-- I suppose that about 4 of the 13 acres ought to be plowed up.

Q.-- If the 4 acres are not plowed up will not the filth that is on it spread out over the other land sooner or later?

A.-- I suppose it would to some extent.

Q.-- Then sowing any of this farm in grasses on account of the filth in the soil cannot be claimed to be a permanent grass sown on the ground?

A.-- I think blue grass would kill out filth of that kind better than any other way, that is my best judgment about it.

Q.-- Sowing blue grass on the 13 acres that you mention has not killed it out has it?

A.-- It has not killed it out on the 4 acres.

Q.-- If blue grass on the 4 acres of the 1st has not killed out the filth, on that 4 acres, why would blue grass kill out filth at another place, if it would.

A.-- I suppose it would be like setting a meadow. It would depend on how strong & hold the filth had.

Re- Cross Examination.

Q.-- Please state anything you may know in regard to the well sunk by Mr. Saffel and wife near the house?

A. - It was bored, either 28 or 38 feet deep, and has a hand pump in it. It is a strong good stream, of cold water.

Q.-- Please tell what you may know in regard to any orchards or fruit trees put out by the Saffels?

A.-- They put out a young orchard of about one half acre above the old brick house, in apples, peaches, plums, cherries and pears, and in the west end of the garden he planted 8 or 10 apple trees.

These last planted about four years ago. The others have been out about 7 or 8 years.

And further this deponent saith not.

Public Com. Road
Mossely & Hughes

Met pursuant to adjournment at Jonesville, Virginia on

Monday, August 2nd, 1901

Present: Pennington Bros. for the complainants.

Jas. W. Orr for the defendants.

J. C. Catron, another witness of lawful age being duly sworn deposes and says:

Q-1- Give your age, residence and occupation?

A. 41 years, Jonesville, Virginia, Carpenter.

Q-2- How long have you worked as a carpenter?

A. 26 years.

Q-3- Have you been asked to go on the lands in controversy in this suit known as the Saffel land and make an estimate of the probable cost of the building of a certain dwelling house thereon, together with crib, smoke-house, and barn shed?

A. Yes sir.

Q-4- Did you go upon said premises, if so when?

A. July 31st, 1909.

Q-5- State whether you made an estimate of the probable cost of the building of the dwelling house on said land, crib, smoke-house, and barn sheds?

A. I did.

Q-6- Have you made out a statement of the result of your investigation, if so, I will ask you to file it with your deposition marked "Catron"?

A. I have and here file the same marked as requested.

Q-7- I notice on said statement filed that you estimated the cost of the building of the dwelling house, dairy, corn crib, smoke-house and barn sheds as \$454.78. Please tell upon what basis you made these estimates as to the cost of material, prices of labor and work?

A. On present prices.

Q-8- You may state if you remember ^{whether} ~~when~~ prices for material and labor and work was greater or less, say about the year 1900 than they

are now?

A. In the year 1900 I was at Wytheville a part of the time and in Grayson County, Virginia, part of the time, and there during that year prices for materials and work were such as would be necessary to go into the building above referred to was about thirty-five per cent less than present prices.

Q-9- In what kind of repair did you find the dwelling house on said land when you were there on the 31st day of July, 1909?

A. It was not in very good repair.

Q-10- You estimated the cost of material and work in building the dwelling house, dairy, corn crib, smoke-house and barn shed at \$454.78. From your observation of these buildings when you were there on the 31st day of July, 1909, what would you say would be a fair cash reasonable price for same as compared with their costs?

A. I would not be willing to pay more than one-half of what I estimated the cost of said building. I say this because of the ill-construction and natural wear and tear of the building.

Q-11- If you observed the ceiling and floors of the dwelling house, tell out of what kind of lumber you think they had been made?

A. All the floors and the side ceiling and the over-head ceiling in the dining room and kitchen were old lumber that had been once used, and the over-head ceiling in the four front rooms was new lumber.

Q-12- Did you notice any of the panes out of the windows in the dwelling house?

A. There were some of the panes broken out. I believe I counted three of the large ones broken.

Q-13- Did you see any evidences of an old brick building that had once stood near to the present dwelling house on said land? If so, state whether you made any measurements of the size of such building and the results of your measurements?

A. I did see evidences of the building from the foundation that was there and part of the brick that has not been torn down. I measured the dimensions and it was 23ft. wide, 62 feet long with a

kitchen 16 x 23 feet.

Q-14- Do you know how many brick it takes to make a cu. ft. in laying them?

A. I figured 17 brick to the foot.

Q-15- Was there enough of the wall in the old brick building to show how thick it had originally been built, and if so, how thick?

A. It was a standard thirteen inch wall.

Q-16- Have you made any calculation and can you tell how many brick it would have taken to have built on the wall of said brick building one foot high around its entire distance?

A. I did, on the main building 3280 brick and on the kitchen part 935, wall count.

Q-17- Did you notice whether or not there had been any cross walls made of brick in said brick building?

A. There was one. In making my calculation for a wall one foot high I calculated a cross wall so as to make 3280 brick.

Cross Examination.

XQ-1- In the estimate made and filed by you as part of your deposition for the material and work in the construction of the dwelling house, dairy, crib, smoke-house, and barn shed, did you or not include and state a value upon ~~any~~ the new material used as well as the work of construction?

A. Yes. I did not value the old material.

XQ-2- I will ask you to take the estimate and ascertain as near as you can and put a value upon the old material used in the construction of these improvements. If you cannot ascertain satisfactorily what the old material was reasonably worth in the condition it was in, I will ask you to state what that amount of material was worth if it had been new material?

A. I will make an estimate and a statement as requested and will file the same as soon as I can do the work with my deposition marked as requested, as estimate No. "2".

XQ-3- You have stated something in regard to ill-construction of the buildings and improvements referred to by you. Please state

whether or not these buildings and improvements such as the dwelling house, smoke-house, dairy and crib, leaving out the barn sheds were not reasonably well constructed for buildings of ordinary value and use?

A. I suppose they were for buildings of ordinary use. As I said before a good many things could have been better put up. Its all cheap work. The weatherboarding was the ~~amexxest~~ best job I saw about the work.

XQ--4- Do you know how prices for material and work were in this county and in Yokum Station where this work was done in the year 1900 compared with similar prices where you were at that time?

A. I do not know.

XQ-5- Please state whether or not these buildings have been reasonably taken care of and are only subject to the natural wear and tear that results to all buildings for the length of time that they have been standing, or how is that?

A. I suppose that it is only the natural wear and tear as I did not observe any extraordinary damages or injury to the buildings only saw where a few boards had been taken off of the dairy and they were fresh broken.

XQ-6- Please state whether or not you think the new dwelling house built by Mr. Saffel and wife had deteriorated one-half of its value since it was erected?

A. No, I do not think that it has deteriorated one-half of its value. I would not give more than one-half of what I estimated it at.

XQ-7- Do you think the smoke-house has deteriorated one-half of its value?

A. It would be about like the dwellings and all the others except the barn. The barn seems to me to have deteriorated 1/2 of its value of the cost and construction. There was a good deal of ill-construction in the barn and sorry material.

XQ-8- I will ask you from your experience and observation as a contractor, builder and carpenter, is it not a fact that the tearing down and removing of the dilapidated old building and removing the

rubbish and taking care of the material, generally costs as much as the building is worth?

That is a question I cannot answer for I never had a thing in the world to do with it.

And further this deponent sayeth not.

(Signature waived)

Proble Om for 16

J. C. Constance
Depo.
B. Saffell

(Signature removed)

And further this question is left to you.

The world to go with it.

First in a question I answer for I have not a friend in
the printing is worth

imperial and taking care of the material, especially costs as much as

MATERIAL WORK.

2200 Feet new w-boardings	\$37.40.	\$20.00	
1300 " old boxing		15.00	
2500 " " framing		25.00	if new lumber add \$31.25
2735 " " ceiling		17.75	
920 " new "	16.64	6.90	
400 " " cornice lbr.	8.00	10.00	
150 " " mould	2.00	1.50	
" " corner boards	1.00	.50	
650 " " V crimped roofing	14.62	2.60	
2 " doors & locks	4.00	.50	
6-41t windows(new)	9.00	2.25	
2-121t " "	2.00	.50	
8 Window frames	4.00	6.00	
11 Old doors		2.75	
13 Door frames	6.00	9.00	
1 Stairway old lumber		3.50	
2 Cheap mantles new	2.00	2.00	
Putting up one old mantle		.50	
1 New mantle	1.00	2.00	
500 Feet old sheathing		2.50	
235 " " flooring		2.00	
Other porch lumber	5.00	5.00	
Paper, canvas and work	21.00		
Paint on outside	23.00		
" " inside	8.00		
Nails	7.50		
Chimney estimated 2500 B'k		10.00	
Lime and sand	3.00		
Front porch	2.50	4.00	
1300 Boards	6.50	5.20	
Foundation		7.00	

Estimate on brick building.

3230 to each foot in height of wall
 935 " " " " " kitchen wall.

Perdie On for 70
vs. { Catrons Statement
A. B. Saffill et als.

J. L. Catrons Statement
1 & 2.
with his Depo.

Dairy.

	Lumber	Work
330 Feet sheathing and boxing	\$4.12	\$2.50
Putting up frame		1.50
Foundation		1.00
350 Boards	1.75	1.40
Nails	.75	

For Crib,

9 Square V crimped iron roofing	20.25	3.20
Nailing on sheathing for above		.75

Smoke house including shed at rear and side.

1200 Feet Boxing	15.00	9.00
1000 Boards	5.00	4.00
150 Feet sheathing old lbr		.75
104 " rafters new "	1.30	1.00
Putting up sill plates and rafters		1.50
Nails	.75	

Barn shed.

Framing shed with old lumber	1.00	1.50
8.00 Feet boxing new lumber	10.00	4.30
900 Boards	4.50	3.60
Nailing on sheathing		1.00
Nails	.75	

253.33

201.45

Total \$ 454.78

The following valuation of old material is added in reply to question propounded by defendants' counsel:

1800 Feet Boxing north	\$22.50
2500 Feet Framing,	31.25
2735 Feet Ceiling,	49.43
11 Old Doors	5.50
1 Stair-way.	5.50
1 Old Mantle-Piece	.50
300 Feet Old Sheathing,	6.25
285 Feet Old Flooring,	5.13
2500 Brick, Chimney	25.00
	<u>\$149.06</u>

Total cost of buildings \$ 603.84

J. L. Leatran

Conte

00237

The further taking of these depositions are resumed according to agreement of the parties in this cause at the Law Office of J. W. Orr, in the Town of Jonesville, Virginia, on the 16th day of August, 1909.

Present: Jas. W. Orr of counsel for the defendants.

E. W. Pennington of counsel for the plaintiffs.

Jas. D. Duff, another witness of lawful age after being duly sworn deposes and says:

Q-1- Give your age, residence and occupation?

A. 56 years old, Pennington Gap, Va., farmer and mechanic.

Q-2- Are you acquainted with A. B. & S. M. Saffel, two of the defendants in this case, and know also where they lived in Yokum Station neighborhood?

A. I am acquainted with them and knew where they lived.

Q-3- If you built or help build any house on the farm where the said A. B. & S. M. Saffel recently lived, tell about when it was, what kind of work you did on the house, and what you may know about the costs of the building of said house?

A. We began in 1896 and finished in 1897 as well as I remember, I having got all my papers burned up in the latter part of 1896.¹⁹⁰⁶ Geo. Hall had the contract for building the house but I worked on the house as an employe of said Hall. Hall told me he was to get \$65.00 for building the house and I agreed to do half of the work for half of the pay. During the time I worked there Saffel had some extra work done and I agreed to do it for him for \$5.00. This extra work was for lengthening the kitchen two feet.

Q-4- If you know, tell where the material came from that went into building this house?

A. The sills under the house, the overhead joists and sleepers and side-wall ceiling, the jams to the windows and doors, the stairway as I remember it, and the flooring in the building all came out of the old brick building. The chimney in the house was also built from brick that came out of the old brick house, and I think the pillars

underpinning the house came out of the old building. The house as built was boxed, weatherboarded on the out-side and ceiled on the inside. The ceiling in the kitchen and dining room of the new house also came out of the old building, but the ceiling overhead in the balance of the house and the weatherboarding was new when it was put up and I think the ceiling was bought from Johnson's at Pennington Gap. The rafters also from this house was taken out of the old brick building.

Q-5- If you heard either Mr. or Mrs. Saffel say anything about the cost of the new building and where he expected to get the money to pay for it with, please tell?

A. I think I heard him say during the time I was there that he was going to take down all the old brick building and sell it, and I believe he sold some of it while I was there. I would not be positive about it, but my recollection is that some time while I was there I heard Mr. Saffel say that he expected to get enough out of the old brick building, together with material which he could use in the new house, to pay for the new building.

Q-6- Where were Mr. & Mrs. Saffel living at the time you built the new house for them?

A. They were living in the old brick building, the main part of it. They had torn down a part of it when I went there.

Q-7- About how long had they been living in the old brick building before they moved into the new house?

A. I do not know how long they lived in the old brick building, but they were living in that house when I went there to work and as soon as we got the new house in a condition that they could move into it, they moved out of the old house into the new.

Q-8- How high was the old brick building?

A. I never did measure it, but my best recollection is that it was full two story and that each story was probably nine or nine and one-half feet high.

Q-9- If you remember, tell what kind of material the new house was covered?

A. It was covered with boards. The whole house, kitchen, porch, dining room and the main part of the building was covered with home made rived boards. I think the boards were made out of ash and oak.

Q-10- Who painted the house if you know?

A. I do not know. He told me when I left there that he was going to paint it himself. It was not in our contract in building the house to paint it. We simply did the carpenters work.

Q-11- Did you ever hear Mr. or Mrs. Saffel say that the price which they were to pay for the carpenters work on the house was \$65.00?

A. In talking to Mr. Saffel about the contract price for building the house, he told me that the price was \$60.00, but Mr. Hall claimed that it was \$65.00, and I was paid one-half of \$65.00 by Hall. Mr. Saffel paid me the extra \$5.00 above mentioned.

Q-12- If you can remember anything about the quality of the boxing used in the building of the new house, and about the price of the boxing at that time, state what it was?

A. It was a very good grade of boxing, about as good as you generally get from the saw mill, and I suppose at that time it could be bought for \$10.00 a thousand. The boxing was new lumber from the saw mill.

Q-13- If you remember about the grade of ceiling and weatherboarding used, tell what you remember about it and about what it would have been reasonably worth per M, at the time the house was built?

A. It was considered good stuff. The weatherboarding that was used on the outside and the new ceiling that was used on the inside, and in my opinion it could have been bought at the time for \$18.00 or \$20.00 per thousand. It was dressed I suppose at the mill where it was bought and was ready to put up when it came to us. I did not buy any lumber along at that time and the price I am fixing upon it is guess work. There were two new mantels put in the house and he bought the stuff new to put them up out of.

CROSS EXAMINATION.

XQ-1- If I understood you correctly you only assisted in building the new dwelling house, including the dining room and kitchen and portico?

A. That is all except the porch on the east side, I helped to build that.

XQ-2- Can you give the dimensions of the new building that you assisted in erecting?

A. I can't give them correctly because I do not recollect them, but to the best of my recollection it was about thirty-two feet long and a story and half high, that is the main building. The kitchen and dining room one story, dining room fourteen feet high and kitchen perhaps ten by fourteen feet. The porch and portico was one story.

XQ-3- Will you please state what new material was used in erecting the building referred to?

A. The boxing was new material. The weatherboarding, ceiling overhead in the four rooms in the main building, two new fireboards to the best of my recollection, the doors and window facings, I think the doors in the main building were new, and dining room and kitchen I think were old. I cannot be positive but I think I used the old window sash in the old building.

XQ-4- You state that the old brick building so much of it as was there when you went there to work was two story high, but that a portion of the building had been torn down. What portion had been torn down and do you know the height of the portion that had been torn down?

A. My understanding was that the kitchen part of the old building had been torn down when I went there, and was one story high.

XQ-5- What condition was the old building in, that portion of it that was standing when you went there?

A. I do not remember particularly about the cracks but I did not consider it a safe building. Mr. Saffel said something to me about tearing down the old building and I told him I would not like to

undertake it unless I got a good price for it, because I thought it dangerous. And I would not have considered a ~~new~~ wall safe after the tie timbers were taken out.

XQ-6- State whether or not in your opinion it was worth, the material in the old building, to take it down, take care of the material and remove the rubbish?

A. It would depend a great deal upon the condition of the material and I do not know that I could answer that question satisfactorily.

XQ-7- Are you certain as to whether or not the rock pillars and underpinning under the new building was out of the old material from the old house, or out of new rock quarried for the purpose?

A. I cannot state positively except as to the corner pillars, those I think were out of rock in the yard, but I suppose came out of the old building.

Re:Examination.

Q-1- State who claimed, if you know, to own the land at the time he was building it?

A. Mr. Saffel or his wife said they owned it.

Q-2- Did they undertake to tell you from whom they had bought it?

A. If they ever said, I do not remember who they said they purchased it from.

Q-3- There appears now to be a well on the east side of the ell. You may state whether the well was bored while you were there?

A. The well that you speak of I do not think was there while I was building the house. The well I had in mind was bored down below the house, that is between the house and the road somewhere.

Q-4- So the well you speak about has been bored since he built the house?

A. Yes sir.

And further this deponent sayeth not.

(Signature waived)

1 days attendance \$.50.

Persia Arr that

vis } Dep. of
L. D. Duff

L. D. Duff's ad

A. G. Hyatt being re-introduced deposes and says:

Q.1- I will ask you to state whether or not since giving your deposition in this case you have taken charge of the Saffel land recovered in this cause and made any contracts with reference to renting the land or any part of it?

A. I have taken charge of the land and rented the house and the grass field east of the house to William Hughes for the year 1910 at the price of \$100.00. I also rented him a small field to be cultivated in corn situated above the house for which he agrees to pay half the corn delivered in the crib shucked.

Q-2- What would be the amount of corn ordinarily that would be raised upon that lot of ground in an ordinary year?

A. I made 240 bushels on the same field two years ago. It ought to raise at least 200 bushels from any kind of seed.

Q-3- What is the ordinary price of corn in that section of country delivered to the crib?

A. Sixty cents this year. I do not know what it will be next.

Q-4- How much more of the land is there other than that you have rented as above stated?

A. The grass field below the road contains about 20 or 25 acres I guess. 20 acres any way. And the field which has been in cultivation next to the river contains about 35 acres. Part of that has been rented to Hughes for wheat already sowed for half of the wheat crop and I furnished the seed and he does all the balance of the work, cuts it and delivers it to the stack my half free of any further charge. The balance of it is to be sown in oats next spring but I have no contract for that yet.

Q-5- How much should be realized then for the entire boundary containing the rentals already referred to?

A. If it is anything like fair season we ought to get for the entire crop next year for the corn, wheat, oats, according to the pres-

ent contract, between \$350.00 and \$75.00.

Q-6- You stated in your former deposition before taking charge of the Saffel land that you thought \$200.00 a year would be a fair rental value per annum of this tract of land. I will ask you to state whether or not now since having taken charge of the land and having examined it that you have any reason for lowering your estimate placed upon the rental value in your former deposition?

A. I have not. I think I can get considerably more than \$200.00 out of it next year.

Q-7- Do you think that on the average during the past years since Mr. Saffel has had the property that \$200.00 would be a fair rental value of the property while Mr. Saffel had the property in his possession?

A. I do. It ought to have been worth that much and kept the fencing in repair which has not been done.

Q-8- State whether or not you think \$200.00 would be a fair rental per year after keeping up the fences and paying the tax out of the proceeds of the farm?

A. Yes sir.

The foregoing questions and answers thereto in reference to the rental and probable rental value of the farm for the year 1910 is excepted to as irrelevant, immaterial and inadmissible, the inquiry before the Commissioner being in reference to the rental value of the farm while Mr. Saffel had it in possession and cultivating^{it} provided of course the same was cultivated and managed in a farmer like manner, not and in reference to what it will be in the future or after he quit possession of the farm.

And further this deponent sayeth not.

Signature waived.

The deposition of James W. Orr taken by consent of parties at the Law office of R. L. Pennington, November 20th, 1909, to be read as evidence in behalf of the defendants in a suit in Chancery pending in the Circuit Court of Lee County, Virginia, in which Perdrie Orr for &c is plaintiff and A. B. Saffel and others are defendants.

Present: R.L. Pennington of counsel for plaintiffs.

James W. Orr of counsel for defendants.

James W. Orr, witness of lawful age being duly sworn deposes and says:

I was well acquainted with Rebecca Orr in her life time. She was a sister-in-law of mine and she survived her husband, D. M. Orr. I remember having heard of her death in Green County, Tenn, but do not remember the date of her death, but from information which I have, and which I have no doubt is correct, she departed this life on the 25rd day of March, 1897 in Green County, Tennessee. I am informed by William A. Orr, one of the heirs at law of D. M. Orr & Rebecca Orr deceased, that one-half of the amount provided for him in the deed executed by D. M. Orr and wife to R. S. Orr, in 1883, was paid to him by the administrator of R. S. Orr, deceased, and the said William A. Orr claims and I as his attorney claims for him that one-half of the said sum, to-wit, \$75.00 is due and unpaid to the said William A. Orr, and which sum he claims, according to the terms of said deed should bear interest after two years from the date of the death of the said Rebecca Orr, deceased. I have in my possession an assignment or order from the said William A. Orr for the said balance due to him under the said deed, which order or assignment is dated September 28, 1909. I have some faint recollection of the transaction by which one-half of the sum mentioned in said deed was settled or paid to the said William A. Orr, and from my knowledge of the matter, which is very faint, I am satisfied that one-half of the original sum is yet due and unpaid to the said William A. Orr.

And further this deponent sayeth not.

State of Virginia } to-wit
County of Lee }

The foregoing depositions of A. G. Hyatt
J. C. Catron J. M. Mosely W. H. Hughes
Jas. D. Duff - Jas. W. Orr, were duly taken
before me for the purpose stated in
the caption.

Given under my hand this the
4th day of December, 1909

Geo. P. Cridlin
Special Commissioner

Pardie Orr et al
vs. { Depositions
Mary Wells et al

"Evidence"

The deposition of J. E. Hobbs taken by agreement in the town of Dryden, on the 24th day of Nov. 1909, to be read as evidence in behalf of the plaintiff in the chancery suit of Perdrie Orr, et al, vs. A. B. Saffell, et al, now pending in the Circuit Court for Lee County, and also to be read before Comr. Geo. B. Cridlin, in this cause.

Present E. W. Pennington, Atty, for the Plff.
J.W.Orr for the defendant.

J. E. Hobbs after being duly sworn deposes and says:

Q. 1. Give your name, age residence and occupation.

A. J. E. Hobbs, I am 73 years of age, reside near the town of Dryden in Lee county, Va. and I am a farmer.

Q. 2 Do you know that part of the Simp Orr land that was ~~xxxx~~ by commissioners assigned to Rebecca Orr, and afterwards bought by A. B. & S. M. Saffell?

A. I do know said land, I was one of the commissioners that helped to divide the Simp Orr lands that was bought by said Saffell ~~xxxxxxx~~ ~~xxxxxxx~~ ~~xxxxxxx~~ several years ago.

Q. How long have you know that part of the Simp Orr land that was bought by the said Saffells exclusive of the Rebecca Orr dower part?

A. I have known it ever since I was a small boy. I have been on it many times; and have past along the public road which runs through this land many times.

Q.4How near do you live to this land and for how long have you lived there?

A. To go around the road it is about two miles, and to go across the Ely and otherlands it would not be more than one fourth mile. I have been living that close to said land practically my life time. I moved where I now live 30 odd years ago.

Q. From your acquaintance with the Saffell part of said Simp Orr

land exclusive of the Rebecca Orr dower part of the same, what in your opinion would be a fair cash rental value of said land, the occupant paying the taxes thereon and keeping up the fencing &c provided that the land was farmed and cultivated in a proper manner for the last ten or twelve years?

A. I have not been on the land much since Saffell owned it. I think there is about 85 acres of it, and most of it is cleared, and I think it would be reasonably worth \$150.00 per annum in the condition it was in when Saffell took charge of it.

CROSS EXAMINATION BY J.W. ORR

Q: Have you observed the improvement put on the land by the Saffells so as to give an estimate of the value of said improvements and if so, what is your estimate of said improvements?

A. I have seen some of the improvements but never was in the house he built, and can not give an estimate of the value of the improvements.

Q. In your estimate of the rental value of the place, do you think it would amount to as much as \$150.00 annually after paying the taxes and keeping up the place?

A. I would think so.

Q. What do you think the rental value of the place exclusive of the improvements?

A. I would think \$125.00.

Q. What was the condition of the old brick dwelling house at the time of Saffell's purchase?

A. It was in bad condition, cracked and in bad shape, and I did not consider it safe to live in. I just considered the house worth what brick there was in it. But I do not know what the brick was worth.

Re-Examination.

Q. Would not the Saffell land have rented per annum for as much with the old brick house standing on it as it would have rented with the little new house and well which Saffell put on the land?

A. I can't answer that. It might not have made but very little difference in the renting of anything. The well was the best thing that was done for the land, as the spring near the old brick house went dry sometimes.

Signed W.E. Hobbs.

The foregoing depositions of J.E.Hobbs was taken and sworn to before me, I swearing the witness by consent of counsel, at the time and place and for the purpose in the caption mentioned.

Given under my hand this the 24th day of Nov. 1909.

James H. On - Curia Chancery

Percie Orr et al

vs. { Depo. J. E. Talbot
for Plff.

Mary Wells

Evidence

J. E. Talbot

Perdie Orr et alComplainants.

Vs. In Chancery.

Mary Wells et alDefendants.

TO THE HON. H. A. W. SKEEN, JUDGE OF THE CIRCUIT COURT FOR LEE
COUNTY, VIRGINIA.

Your undersigned, Special Commissioner ~~who~~ was by decree entered
in the above styled cause, on the 14th day of May, 1908, appointed for
the purpose ~~of~~ and directed to ascertain and report to court,

1st. All rents as against the defendants for the use and posses-
sion of the tract of land therein mentioned, if anything, and against
whom said rents are chargeable and make an itemized statement of the
amounts thereof.

2nd. Whether or not A. B. Saffel and S. M. Saffel have put any
improvements upon said property and, if so, the value thereof.

3rd. Whether or not R. S. Orr, or his admisistrator or heirs
have paid any sums of money under ~~deed~~ of April 7, 1883, by which
said R. S. Orr was to pay said sums of money to William A. Orr, Cla-
manda Wells, and Mary Wells, and if any of said sums have been paid,
the dates and amounts thereof.

4th. Any other matters specially required of him by any par-
ties interested or which he himself may deem pertinent.

Having given proper notice to the parties as required by said
decree, and having completed the work so required of him, begs leave
to report as follows:

Your Commissioner will take up the several references in the
order set out above.

1st. The evidence submitted to your Commissioner on the question
of the amount which should be pharged as rent against the parties who
have had possession of said tract of land is conflicting, amounts rang-
ing from \$75.00 to \$200.00 per annum. In looking over the papers in
the cause your Commissioner finds that when the case was before Com-

missioner Hyatt, previous to the filing of the bill of review, it was agreed between the parties to the suit that the whole farm rented for \$300.00. See deposition of D. L. Jessee, taken January 27, 1890, and the report of Commissioner Hyatt filed March 20, 1890, reports \$150.00 as the proper annual rental for this tract of land. In his deposition filed before your Commissioner, J. E. Hobbs, who is a farmer, seventy-three years of age, and who has known this land since a small boy and who helped to divide the land between R. S. Orr's heirs and Rebecca Orr, testifies that the land is reasonably worth \$150.00 per annum in the condition it was in when Saffel took charge of it and this after paying taxes and keeping up the place. A. G. Hyatt, another witness testifies that the reasonable rental value of the land per annum is \$200.00. A. K. DeBusk, witness introduced by the defendant, testifies that \$75.00 would be a fair rental value for the place. After considering all this evidence your Commissioner has come to the conclusion that the net sum of \$150.00 per annum would be the proper amount of rent to charge against parties in possession.

Your Commissioner finds from the papers in the case that Rebecca Orr held this land during the years 1890 and 1891 after the same was recovered by her in the original suit; that S. H. Wells, vendee of Rebecca Orr held the land during the years 1892-3-4-5-6. That S. M. and A. B. Saffel, vendees of S. H. Wells, held said land during the years 1897-8-9, 1900-1-2-3-4-5-6-7-8. S. M. & A. B. Saffel also held the land the principle part of the year 1909, ~~but~~ ^{and} attorney's for the plaintiff state to your Commissioner that they do not claim any rental for year 1909, on account of the fact that Mr. Saffel gave up the land and they received the larger part of the rents, at least, after he left it.

Your Commissioner has, therefore, charged Rebecca Orr two years rental at \$150.00. S. H. Wells rental for five years at \$150.00 per annum, and S. M. & A. B. Saffel for twelve years at \$150.00 per annum. He has calculated the interest on the sum due for each year's rental and made up a statement showing the exact amount due from each of

of these parties, which statement is herewith attached marked statement "A".

Your Commissioner has taken no account whatever of the running of the statute of limitation, but reports the full amount for each and every year that this land has been held by parties other than the plaintiff since Rebecca Orr recovered the same in the original cause.

2nd. The question of improvements referred to your Commissioner has given him some little trouble. ^{But} ~~That~~ after going over the evidence submitted to him carefully, he has made up his statement which he hereto attaches marked statement "B", and which he thinks is the reasonable cost price of improvements made upon the land by S.M. & A. B. Saffel. When S. M. & A. B. Saffel took possession of this land there was standing on it an old brick house. The proof shows that this building was in a bad state of repair and probably in a dangerous condition. Soon after taking possession of the land, Mr. Saffel tore down the old brick building and erected a new house, using a large part of material out of the old building in erecting the new one. The evidence of J. D. Duff shows that the carpenter's work in building the new dwelling cost \$70.00, he being one of the carpenters who did the work. The estimate filed by J. C. Catron with his deposition in this case shows that the new material used in the house, including the papering and painting, was reasonably worth \$189.16. He also estimates the building of the chimney and foundation at ~~\$7.00~~ ^{\$17.00}. To these three sums your Commissioner has added the sum of \$18.00 for new boxing which is not included in Mr. Catron's statement. This makes the total cost of the dwelling erected by S. M. & A. B. Saffel \$284.16, which your Commissioner thinks is ~~the~~ ^{exclusive of the old value of the old material used therein} reasonable cost thereof as shown by the evidence submitted to him. There were several other smaller buildings erected by Mr. & Mrs. Saffel, to-wit, dairy, smoke-house including shed, a barn shed, a new roof put on crib. He also sunk a well, furnished it with pumps &c., and planted a young orchard of probably fifty trees. Your Commissioner has adopted the estimate of J. C. Catron as to the cost of the dairy, crib roof, smoke house, and barn shed. Mattison Cooney, who bored the well on the place,

gave his deposition in the case and states that he does not know the exact cost of the well, but thinks that the whole cost, including pumps, would amount to from \$50.00 to \$75.00. Your Commissioner in his said statement has placed the value of the well at \$62.50, taking the average of \$50.00 and \$75.00. There is no proof before your Commissioner as to the cost of planting out the young orchard referred to and the number of trees in the orchard is ~~a~~ merely a matter of conjecture. He has placed on the statement however, the item of fifty fruit trees for which he allowed \$12.50. There is nothing before your Commissioner to show the dates when these improvements were made. This land was conveyed to A. B. & S. M. Saffel in February, 1897, and the proof shows that the dwelling was built soon thereafter, probably within a year. Some proof was taken as to fencing done on the property by S. M. & A. B. Saffel, but your Commissioner thinks from the evidence that the fencing was in probably no better condition when he left the premises than when he took ~~XXXXXXXXXX~~ charge of them, and that such fencing as he did amounted to nothing more than keeping the old fencing in repair. It has been contended before your Commissioner that the old building which was on the premises and which was torn down by S. M. & A. B. Saffel, was worth as much as the new building which he erected. Your commissioner thinks from the evidence that the old building was worthless as a dwelling house and was actually dangerous, and while the new building was not a first class building, yet it ~~was~~ is a reasonably comfortable small farm house. Your Commissioner in estimating the worth of the new building allowed nothing whatever for the material used therein which came out of the old building. It is probable that there was a great deal more brick in the old building than are used in the new, in fact some of the evidence shows that Saffel sold some of the old brick, but there is no evidence to show how many brick were sold, nor the worth thereof. The evidence further shows that the building was in such a condition that it was dangerous to persons tearing same down, and that it would have probably been very expensive to have the old building removed. Consequently your Commissioner thinks that a fair

adjustment of this matter is to give to A. B. & S. M. Saffel credit as an improvement for an amount equal to the new material used and the cost of erecting the new building.

3rd. Parties hereto have filed before your Commissioner a copy of a writing which is recorded in the County Clerk's Office, Deed Book 34 page 174, which shows that Lizzie P. Orr, wife of R. S. Orr, paid to Clamanda Wells wife of Morris Wells and Mary Wells wife of Samuel Wells, the sum of \$141.00. This paper is dated 1st day of March, 1898, and is signed by L. H. Wells, M.W.Wells, M.H.Wells, and R.C.Wells. Said paper is filed herewith marked "Agreement C". There has also been filed before your Commissioner a receipt signed by William A. Orr, Sr., dated August 8, 1896, for the sum of \$72.70, paid by E. W. Pennington, administrator of R. S. Orr. Jas. W. Orr in his deposition taken before your Commissioner claims to have an assignment from William A. Orr to him for any amount which may be found to be due William A. Orr in this cause, and requests your Commissioner to report this ~~account~~ to the court. The receipt of William A. Orr for said sum of \$72.70 is filed herewith marked "W.A. Orr, receipt." *These two sums are all which your Commissioner can ascertain which have been paid under the provisions of said deed to said parties.*
The depositions taken before your Commissioner and filed before him in this cause are filed herewith marked "Evidence."

All of which is respectfully submitted.

Geo. P. Cridlin
Special Commissioner.

"Statement A"

A Statement of the amount of Rents due from various parties to the Widow and Heirs at Law of P. S. Orr, or demand for the use and occupation of the tract of land conveyed by Rebecca Orr to S. H. Wells, and by said Wells and wife to S. M. & A. B. Saffle.

Estate of Rebecca Orr

To the widow and Heirs of P. S. Orr who died			
To rent for year 1890			15000
" interest on same from Jan. 1, 1891 to Jan. 1, 1910	(19 yrs)		17100
" rent for year 1891			15000
" int. on same from Jan. 1, 1892 to Jan. 1, 1910	(18 yrs)		16200
Total due Jan. 1, 1910.			\$63300

Estate of S. H. Wells

To the Widow and Heirs at Law of P. S. Orr who died			
To rent for year 1892			\$15000
" int. on same from Jan. 1, 1893 to Jan. 1, 1910	(17 yrs)		15300
" rent for year 1893			15000
" int. from Jan. 1, 1894 to Jan. 1, 1910	(16 yrs)		14400
" rent for year 1894			15000
" int. on same from Jan. 1, 1895 to Jan. 1, 1910	(15 yrs)		13500
" rent for year 1895			15000
" int. on same from Jan. 1, 1896 to Jan. 1, 1910	(14 yrs)		12600
" rent for year 1896			15000
" int. on same from Jan. 1, 1897 to Jan. 1, 1910	(13 yrs)		11700
Total due Jan. 1, 1910.			\$142500

S. M. & A. B. Saffle

To the Widow and Heirs of P. S. Orr who died			
To rent for the year 1897			15000
" int. on same from Jan. 1, 1898 to Jan. 1, 1910	(12 yrs)		10800
" rent for year 1898			15000
" int. on same from Jan. 1, 1899 to Jan. 1, 1910	(11 yrs)		9100
" rent for the year 1899			15000
" int. on same from Jan. 1, 1900 to Jan. 1, 1910	(10 yrs)		10000
" rent for year 1900			15000
" int. from Jan. 1, 1901 to Jan. 1, 1910	(9 yrs)		8100
" rent for year 1901			15000
" int. from Jan. 1, 1902 to Jan. 1, 1910	(8 yrs)		7200
" rent for the year 1902			15000
" int. on same from Jan. 1, 1903 to Jan. 1, 1910	(7 yrs)		6300
" rent for year 1903			15000
" int. on same from Jan. 1, 1904 to Jan. 1, 1910	(6 yrs)		5400
" rent for year 1904			15000
" int. on same from Jan. 1, 1905 to Jan. 1, 1910	(5 yrs)		4500
" rent for the year 1905			15000
" int. on same from Jan. 1, 1906 to Jan. 1, 1910	(4 yrs)		3600
amt. carried forward			149800

Amt. Brought Forward		1998 00
To rent for the year 1906		150 00
" int. on same from Jan. 1, 1907 to Jan. 1, 1910 (3-yr.)		27 00
" rent for the year 1907		150 00
" interest on same from Jan. 1, 1908 to Jan. 1, 1910 (2-yr.)		18 00
" rent for the year 1908		150 00
" int. on same from Jan. 1, 1909 to Jan. 1, 1910 (1-yr.)		9 00
Total due Jan. 1, 1910		\$2502 00

"Statement A"

100
12
200
300
400

Statement of Improvements made by S. M. &
A. B. Saffh on the Rebecca Orr tract of land while
same was in their possession.

Dwelling House		
New material used (see Catron's estimate) including papering & painting	18916	
New logging not included in Catron's estimate	1800	
Carpenter's work on house	7000	
Building chimney	1000	
" Foundation	700	\$28416
Dairy (see Catron's estimate)		1302
Smoke house and shed		3830
Baru shed		2565
Out Roof		2390
Drilling well, complete with pump		6250
Orchard, estimated at 50 trees		1250
		\$46003

Statement B

Percie Orr et al
v2. { Commissioner
Report.

Mary Well et al

Filed Dec. 4, 1909.

H. C. Ewing, Clerk.

Comm. Feb. \$24⁰⁰

Perdie Orr for &cPlaintiff.

Vs.

A. B. Saffel and others Defendants.

On question of the right of the complainants to recover of the defendants rents for the use and occupation of the lands recovered in this cause, and on the question of the right of the defendants to offset improvements against the rents.

1st. Question of right to improvements.

The right to recover for improvements depends upon the question whether the defendant had actual or constructive notice of the infirmity of his title. In either case he has no right to claim compensation for improvements made upon the land. In the case of Effinger vs. Hall, 81 Va. 95 it is said:

"Persons who occupy lands under defective title and make thereon permanent and beneficiary improvements with notice, actual or constructive of the infirmity of their title, cannot upon the recovery of said lands by the rightful owners, obtain compensation for said improvements. Means of notice with the duty of using those means is equivalent to actual notice." (See also Lamar vs. Hale 79 Va. 147)

The Supreme Court in this case, 64 Southeastern page 1060 said:

"Not only was S. H. Wells bound by notice of the right of appelle but appellants claiming under him are so bound. That Saffel and wife had actual notice of the appellants right when they purchased the land in question from Wells is conclusively shown by the fact appearing in this record that they took from Wells a bond of indemnity against loss of damage should the infant parties interested, when they arrive at the age of twenty-one years, assert their right to the land, and also binding Wells to pay all costs of suit by said infants for that purpose." There can be no question under the particular facts in this case about Saffel and wife having notice of the defects in their title previous to the erection of the new building upon the property aside from the constructive notice which the court declares in its opinion in this case in the Supreme court where it is said:-

"It is an established rule in Virginia that where a party purchases an estate which is subject to the right of another, and that right is shown by the chain of title papers, the purchaser is charged with notice of all the title papers, or papers to which they refer may disclose, upon complete examination."

~~disclose~~

That actual notice is conclusively shown by the taking of the bond which is part of the record in this cause.

The old Chancery cause of Rebecca Orr vs. Pennington, administrator, was, in effect a pending cause and was binding upon all par-

ties thereto and their privies until final adjudication thereof, or until the statute of limitations cut off all parties from ~~first~~ asserting their rights therein, and each succeeding purchaser under Mrs. Orr became a privy to those proceedings and bound by everything which they showed.

It seems to us there is but one debatable question before the court, and that is on the question of the rents as to how long the plaintiffs are entitled to recover against Saffel ~~for rents~~. Section 2732 of the Code provides: "The defendant shall not be liable for such annual value for any longer time than five years before the suit. The difficult question therefore arises ~~xxxx~~ when was this ^{whether} suit pending? Another question also arises as to ~~when~~ the particular statute referred to is applicable to persons under disability such as infants. Section 2917 of the Code exempts persons under disability from the operation of limitation generally. Our contention however is that this suit has been pending all the while and that the bill to review the decree, or to show cause against the decree was not a new suit but a revival of the old suit to finally determine the rights of the infants under the questions raised in the original suit. The proceedings in this cause were nothing more than a rehearing of the old matter within the statutory period allowed therefor.

Interest - On use and occupation:

Same as on other contracts

See Sec. 2787 of the Code -

If Rebecca Orr were the party against whom the rents were charged how would they be computed?

In the same way should they be computed against Saffel because they stand in her shoes exactly.

If this case had been appealed & for some reason kept on the docket 10 years or 20 years for how long would rents have been charged against Mrs. Orr?

===== #
perdie & R. S. Orr, complainants, #
vs. #Brief of counsel
#for Complainants.

A. E. Saffle, et als. Defendants. #
===== #

On a bill of review filed in the Circuit Court for Lee County at the December, term 1907, ~~whereby~~ in a Chancery Cause of Rebecca Orr vs. E. W. Pennington Administrator and others, the Circuit Court for Lee County on said bill of review, demurrer and answers thereto on the 14th day of May, 1908, entered a decree granting the pray^{of} of the bill of review and thereby set aside the decrees of the Circuit Court entered in said cause of Rebecca Orr vs. E. W. Pennington, Administrator, et als, on the 12th day of September, 1889 and April, 2d, 1890, which action on the part of the Court on said bill of review had the effect of restoring to the said complainants a one-half interest in the tract of land conveyed by a deed of D. M. Orr and wife to R. S. Orr, Sr. *on aprie, 7th 1883.*

The Court also by said decree of the 14th day of May, 1908, appointed Geo. P. Gidlin for the purposes:

First: Of ascertaining all rents, if any, and against whom such rents should be charged from the time of the eviction of said complainants of the lands they were deprived of by said two decrees of September, 12th, 1889 and April, 2d, 1890; and,

Second: Of ascertaining whether A. B. and S. M. Saffle had put any permanent improvements upon said land and the value of such; and

Third: Whether Robt. E. Orr in his lifetime, or his administrator or heirs, have paid any sums of money to Wm. A. Orr, Clamanda Wells and Mary Wells, and the dates and amounts of such payments.

Under the said decree of May, 14th, 1908, said Cridlin has taken proof and filed in this cause his report, and on the first point shows the number of years which each of the parties respectfully occupied the lands after the dates of said two decrees of September, 12th, 1889, and April, 2d, 1890.

This report finds that the annual rental value of said lands from the time of said complainants being evicted therefrom up to and including the year 1908 was (\$150.00) one hundred and fifty dollars per annum; that ~~Rebecca Orr~~ Rebecca Orr used and occupied the same for the years ~~from~~ 1890 and 1891; that S. H. Wells as vendee of said Rebecca Orr, used and occupied the same during the years 1892-3-4-5 and 6; and that S. M. and A. B. Saffle, vendees of S. H. Wells, held, used and occupied said lands for the years 1897-8-9-190¹~~0~~-2-3-4-5-6-7-8 and a part of the year 1909.

Upon the ^{second}~~first~~ point required to be reported upon by said Cridlin he finds that said Saffle put upon said lands, after he came into possession of the same, improvements amounting in the aggregate to \$_____.

Upon the third point required to be reported upon by said Cridlin he finds that Lizzie P. Orr wife of R. S. Orr paid to Clamanda Wells and Mary Wells the sum of (\$141.00) one hundred and forty-one dollars; and to Wm. A. Orr, Sr. the sum of (\$72.70) seventy-two dollars and seventy cents paid to him by E. W. Pennington, Administrator of said R. S. Orr.

It will be seen from an inspection and reading of said Cridlin's report that he does not undertake to pass upon any of the questions raised in the pleadings in this suit; he does not attempt to adjust any of the equities among the parties to this suit; he leaves that for the decision of this Court; he simply finds facts; and it is upon these

facts so found by said Cridlin and the pleadings in this cause this Court must now decree:

And to us the first question presented is: ~~is~~ whether the defendants, Saffles, should be charged with the rents and profits of said land from the time they took possession of them in 1897 up to and including a part of the year 1909, or for only five years of such rents and profits previous to the filing of said bill of review of said complainants in said cause. The contention of the complainants is, that they are entitled to the rents and profits upon said land from said Saffles from the time they took possession of said lands, because by law (Section #3424 of the Code of 1904 and the decision of the Court of Appeals rendered in this cause on the 24th day of June, 1909) this suit was open and in effect a pending cause in the Circuit Court for Lee County from the time said two decrees of September, 12th, 1889 and April, 2d, 1890 were pronounced in the cause of Rebecca Orr vs. Pennington, Administrator, et als. The holding of the Court of Appeals in this cause upon the bill of review to the effect that this cause was an open and pending cause is in line with the case of Coolsby vs. St. John 25th Gratton, page #146 wherein Judge Moncure on page #163 said: "there was but one case, the case on the bill of review being but a continuation of the original case in the same Court".

Of course, if it be true that the case of Rebecca Orr vs. Pennington, Administrator, was in effect a pending and open cause from the time of the rendition of said two decrees of September, 12th, 1889 and April, 2d, 1890, ~~wherein~~ then *it follows* ~~it lacks~~, without further argument, that the defendants, Saffles, cannot in this case ~~re~~^{re}voke the five years Statute of Limitations(as they seek to do under sections #2760-61-

62-63-64; and if they cannot evoke the provisions of law as provided in the sections of the Code of 1904 last aforesaid referred to, then it neccessarilly ~~looks~~ ^{follows} that they should be chargeable with the ~~the~~ rents and profits of said lands from the time(1897) they took possession of the same up to and including the year 1908 and one-hlaf of the year 1909.

By the petition of the defendants filed in this cause they allege they have made permanent and valuable improvements upon said lands at a time when there was reason to believe their title good. And they, by said petition, seek ~~to~~ to have the value of such improvements set off against the rents and profits of said lands, and this they might have done had they been purchasers of said lands for value without notice. But the complainants in this cause contend and the Court of Appeals in this cause has already held that they were not bonified ^lpurchasers of said lands without notice. For the Court of Appeals in rendering its opinion in this cause said:" We have seen that the doctrine Stare decisis is unavailable to these appellants, and their claim of being inocent purchasers for value without notice is equally as unavailable, they stand on no better ground than did S. H. Wells under whom they claim, and Wells could occupy no higher ground than Rebecca Orr, his grantor. If he had, as was his duty, looked to the chain of title to the land which Rebecca Orr proposed to convey to him he would have found the cause of Rebecca Orr vs. E. W. Pennington Administrator, etc. open and in effect ~~and~~ pending cause in the Circuit Court of Lee County, as ^{to} the infant defendants Perdie and Robert S. Orr, in which they had under the Statute under section #3424 of the Code until six months after they attained the age of twenty-one years to show cause against the

decree entered therein prejudicial to them". And further on in the opinion of the Court entered in this cause, it further said in passing upon the question as to whether Saffles were innocent purchasers of said lands without notice:

" Not only was S. H. Wells ^{bound by} ~~held~~ with notice of the rights of ~~appellants~~ appellees, and that Saffell and wife had actual notice of appellant rights when they purchased the land in question from Wells is conclusively shown by the fact appearing in this record, that he took from Wells a Bond of indemnity against loss or damages should the infant parties interested(appellees) when they did attain the age of twenty-one years, assert their right to the land they(Saffell and Wife) purchased from Wells, or any part thereof, and also finding Wells to pay all costs of a suit of said infants for that purpose."

Thus it will be seen that the Court of Appeals has already held that these defendants were purchasers with notice, and they being ~~xxx~~ purchasers with notice of the infirmity of ^{their} ~~his~~ title, they cannot claim against the rightful owners the improvements put upon the land by him. Effinger vs. Hall #81 Va. page #95. At page #105 the Court in rendering its opinion in the case last cited said: " The appellee cannot be charged with any part of the costs of these improvements if the same were made by the appellants, or of those under whom they claim, with notice of appellees claim, or, in other words, with notice of the infirmity in their titles". The doctrine in this case has never been over-ruled or modified; for the Appellate Court of in this State as well as the Appellate Court of West Virginia have, since the rendition of the opinion in the principal case, been adhered to. (See Keiser vs. Cubine #101 Va. page #768.

Yock vs. Mann #49 S.E. #1019: *98 Va. 5, Reg - 601 Note*

In line with these same decisions it has been held in West Virginia: " When one ~~has~~^{whose} title to personal property is being litigated in a pending suit obtains possession thereof upon order of another Court and voluntarily makes improvements thereon, they will not, as a general rule, upon restoring such property to the hands of the receiver, be allowed compensation for such improvements". Hulings vs. Jones, #60 S.E. #874.

It will be seen from the report of said Commissioner, Cridlin, that he simply finds the ~~value~~^{costs} of the improvements put upon said lands by said Paffells. He does not find that the ~~value~~^{costs} of the improvements so put upon said lands increased the value thereof. To our minds it does not necessarily follow that the expenditures of the money which the commission[✓] found that said Paffells did expend upon said lands increased⁸ the value of these lands. There was no proof taken whatever that these expenditures of money in the way of improvements put upon said lands of said Paffells increased the value thereof one cent; and unless the lands had been increased in value by placing said improvements thereon nothing can be allowed said defendants for such expenditures of money. The reading of the Statute on this subject being:

" They shall estimate in his favor the value of such improvements as were so made+++++ not exceeding the amount actually expended in making them, and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment. Section #2763, Hollingsworth vs. Funkhouser, 85 Va. #448."

B. H. Sweet
and
Pennington Bros.
Complainants

{ Brief
of
completo

(5)

VIRGINIA, IN THE CIRCUIT COURT OF LEE COUNTY:

The plea of S. M. Saffell and A. B. Saffell, defendants , to a bill of complaint exhibited against them and others by Perdie Orr, for herself and as next friend for her brother, Robert S. Orr, at First March Rules, 1908.

These defendants by protestation not confessing all or any part of the matters or things that the said bill of complaint contained to be true in manner and form as the same are therein set forth for plea, never-the-less, to said bill doth plead and aver that heretofore and before the said complainant exhibited her said bill in this honorable court, to-wit, on the 19th day of December, 1907, the said complainant filed her bill of complaint in this court against these defendants and against their same co-defendants in this cause, for a review of the same decree in the same cause between the same parties, and for like relief against these defendants, and their same co-defendants, as the said complainant prays by her present bill, and which bill filed as aforesaid, on the 19th day of December, 1907, was filed in open court and by leave of this honorable court, which bill is still pending in this honorable court, and yet undetermined and undisposed of. A copy of which bill first filed as aforesaid, and undisposed of, and of the order of court allowing the same to be filed, are herewith filed as part hereof marked exhibit " First Bill & Order".

Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill filed at First March Rules, 1908. And pray to be hence dismissed with their reasonable cost in this behalf expended.

S. M. Saffell.
A. B. Saffell
By _____

VIRGINIA, Lee County, to-wit:

I, A. O. Brown a Notary Public in and for the county and state aforesaid do certify that James W. Orr this day personally appeared before me in my said county and made oath that the facts stated in the foregoing plea are true to the best of his knowledge and belief.

This March 2nd, 1908.

My commission expires May 8th, 1909.

S. M. & A. B. Daffell.

also } Plea

Perdie Orr et als.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Clamanda Wells, Mary Wells, Wm A. Orr, S. M. Saffell and A. B. Saffell*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *March*, 190*8*, to answer a bill ~~in chancery exhibited against~~ of

review in suit of Rebecca Orr vs. Lizzie C. Orr, et al, instituted by Perdie Orr who sues for herself and as next friend for Robert Orr, an infant.

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *5th* day of *Feby*, 190*8*, and 1*32*nd year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk

_____, Clerk

Purdie Bros. & Co.

VS

}

SUBPENA
IN
CHANCERY

Clamanda Wells, et al.

Pur. Bros. & Co. p. q.

To

1st Mar.

Rules

Circuit

Court

1908.

Sums accepted by

1st Mar.

affid 4 1108

W. G. L. Kins